

METROPOLITAN AREA PLANNING COMMISSION
MINUTES

April 13, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, April 13, 2000, at 12:00 noon, in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield (late arrival); Bud Hentzen; Bill Johnson (late arrival); Richard Lopez; Ron Marnell (late arrival); John W. McKay, Jr., (late arrival); Jerry Michaelis; Susan Osborne-Howes (late arrival); George Platt; Harold Warner, Jr.; and Ray Warren. Chris Carraher and Deanna Wheeler were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Barry Carroll, Associate Planner, and Karen Wold, Recording Secretary.

1. Presentation on Hilltop Neighborhood Revitalization Plan

RAY ONTIVEROS, Planning staff, presented a summary of the Hilltop Neighborhood Plan, and held a question and answer session following. Dennis Hesselbarth, Pastor of the Free Urban Church was in attendance, and also responded to questions by the Commissioners. The main points are summarized below:

1. A neighborhood "Park" Assessment was conducted by the consultants
2. There are nine major goals in the plan:
 1. Preserve community policing
 2. Preserve community garden and park
 3. Add programs for youth
 4. Add tenant screening and strengthen code enforcement
 5. Add more parks and street lights
 6. Remove barriers to home buying
 7. Remove abandoned houses
 8. Keep out drugs
 9. Keep out slum landlords
3. Most goals relate to improving existing undesirable conditions -- not to new development
4. A recommendation shown on the future plan map shows the removal of the separation between Hilltop Manor Coop Association area and single-family homes and the creation of a new Greenway
5. New Parks are shown on the map
6. New streets and cul-de-sacs are proposed as shown on the map with the exception of no through street being built to the north of the Activity Center

Community Feedback

7. Neighborhood stakeholders want to stress the severity of conditions and urgency for action
8. There is a strong desire to eliminate the poorest housing through stronger code enforcement; improve the streets and add parking
9. Residents want the City to make it easier for individuals to build and rehabilitate housing in area
10. Homeowners need to find ways to get loans for property improvements - lenders
11. Do not put in streets which cut through Friendship Park (To the north of the activity center)

Osborne-Howes arrived at the meeting at 12:40 p.m.

2. **Reconsideration of S/D 99-63** - One-Step Final Plat of S AND D EQUIPMENT ADDITION, located north of Douglas Avenue, on the west side of West Street.
 - A. It appears that existing municipal services are available to serve this site. The applicant shall plat an additional 4-ft of utility easement to conform with the standard 20-ft utility easement. City Engineering needs to comment on the need for any guarantees or easements. A guarantee for the extension of storm sewer is required.
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.

- D. The applicant shall provide a Restrictive Covenant stating that upon the platting of the adjoining lot to the south, the southernmost access opening shall be relocated to be centered along the south property line, unless the proposed use of the property to the south consists of a drive-through bank, drive-through restaurant, convenience store, gas station or other similar high-volume, traffic-generating use.
- E. The MAPC Chair should be revised to reference "Frank Garofalo".
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The final plat tracing shall reference a tie point to a section corner.
- H. The name of the owner of the property indicated in the platting binder must correspond with the owner's name on the plat.
- I. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

STRAHL "This is the reconsideration of the S & D Equipment Addition, located north of Douglas on the west side of West Street. It encompasses just under one acre, and there was a zone change to 'LC' Limited Commercial that was approved by the City Council in July of 1999, subject to replatting. The plat was approved by the MAPC in October 1999 and the City Council just recently sent the plat back to you for reconsideration, based on the issue of access.

You may recall that this plat was previously approved by this body, subject to the applicant providing a letter to the Planning staff, indicating that he may agree to future shared access with the adjoining property to the south, located right here (indicating). Although the plat was approved with the southernmost opening required to be along the property line, (indicating) right here, the current proposal by the applicant is for the access opening to be located approximately 24 feet north of that southern property line. That is based on an existing KG&E power pole and gas regulator that they are trying to avoid relocating at this time.

The Planning staff recommended that a joint access to the south be required when the property to the south is rezoned and redeveloped in order to reduce the number of driveways along West Street in accordance with both the subdivision regulations and the Comprehensive Plan. Now, the property to the south is a vacant lot with approximately 120 feet of frontage and if there are no provisions to require joint access to the south, then an additional commercial driveway on West Street would be inevitable when that southern property is zoned to a commercial use.

So we have had recent discussions with the applicant, and the applicant has agreed to relocate their proposed access to be centered on the south property line upon the platting of the property to the south. So the access would be centered right there along the south property line and the relocation would not be required if the use to the south was a drive-through bank, a drive-through restaurant, a convenience store, a gas station, or other similar high-volume traffic-generating uses. The applicant was concerned about incompatible use to the south that would pose problems with his circulation. The other condition would be the cost of the relocation of the drive-way in addition to the utility equipment located right there which would be incurred by the property-owner to the south."

GAROFALO "Are there any questions of Neil?"

PLATT "Back up, and tell us again exactly what we approved?"

STRAHL "Okay. You had approved one access point along the south property line with the applicant providing a letter to the Planning staff saying that he 'may' agree to a future cross-lot access agreement with the property to the south."

WARREN "He said he would look with favor."

STRAHL "Yes, look with favor."

LOPEZ "And the City Council referred it back to us for what reason again?"

STRAHL "Well, Planning staff again recommended that cross-lot access agreement be required instead of the possibility."

LOPEZ "Okay, then you stated that that utility pole and the utilities are on the north side of the property line?"

STRAHL "They would be located right here (indicating)."

LOPEZ "They are located there right now?"

STRAHL "Yes."

LOPEZ "So the property owner on the south side would be required to pay for the relocation of the property lines on the north side? Is that what you said?"

STRAHL "Upon the platting of the property to the south, the relocation of the driveway and the relocation of the utilities would have to be incurred by the property owner to the south, yes."

LOPEZ "Are the utilities on the north benefiting the south property?"

KROUT "There is a shared access drive."

LOPEZ "But the north property owner will also benefit from it, won't they?"

KROUT "They will already have an access drive to the north."

LOPEZ "And utilities."

KROUT "Yes, they have utilities."

LOPEZ "But they don't want to share in the cost of moving them as a condition of agreeing to the shared access? Is that what I am hearing?"

KROUT "No. They would have come back and asked you to vacate or change the access control so that they could build a drive-way 24 feet to the north, and we are saying that rather than have it on the south property line, it would be preferable to let them go ahead and build it where they want to now, and then when the property owner to the south comes in and wants to a drive, the driveway would be relocated to the south and that the owner to the south would bear the cost of relocating any utilities as part of that driveway construction."

LOPEZ "If I an understanding this correctly, the property that is requesting the zoning now will have a driveway north of where we are talking about, but if a tenant to the south comes in and requests a driveway that the property owners to the north is actually going to agree to close their existing driveway and do a shared driveway? They are going to agree to that?"

STRAHL "Yes."

LOPEZ "They aren't going to come back here and talk about a hardship and financial burden and all of that?"

STRAHL "That would be a condition of the plat."

GAROFALO "Who would share the cost of relocating the driveway? Would they share it?"

KROUT "The property owner to the south has to build a driveway anyway, so he may as well build it as a shared driveway."

MICHAELIS "Well, he is going to have to pay for utilities to put them in a new location, too."

GAROFALO "Yes, he will have to pay for the utility relocation."

MICHAELIS "There will be some due diligence on that property."

LOPEZ "If you've got another access open, you nullify the whole thing, right?"

KROUT "That's right. If you approve a plat to the south someday in the future and he says 'I don't want a joint opening, I want my own access opening, and I don't want to put it there', then that will be your decision when that plat comes in."

PLATT "I am still not clear. Did we or didn't we approve the access on the north property line?"

STRAHL "Yes. There also was a joint-access along the north property line, yes."

PLATT "And that has nothing to do with the discussion on the south, so there will be two accesses?"

STRAHL "Yes."

GAROFALO "There will be two accesses, then. One north and one south?"

STRAHL "Correct."

GAROFALO "And that was okay with Traffic Engineering?"

KROUT "Traffic Engineering agreed with our initial recommendation that this be a driveway on the south end that will be shared with the lot on the south in the future. But I think we are saying that we agree to a compromise on this issue."

LOPEZ "The compromise being?"

KROUT "That they can actually build a driveway for themselves a little bit north of where it was originally identified and that they will share an access unless there are certain uses that develop to the south."

LOPEZ "And if the utility lines need to be relocated, they share in the cost?"

KROUT "We haven't said that. You might want to talk to the applicant's agent about that."

MICHAELIS "Neil, I guess, for clarification, would you explain it to me, because the way I recall it, at Subdivision we had this discussion and we approved it with the driveway where it is. At MAPC, we approved it with the driveway where it is. Now, from there it goes to the City Council. The Traffic Engineer sat here and was okay with it at Subdivision and everything else. What transpired between then and City Council that was different to warrant this coming back. I don't understand how it came back. If you could explain it."

KROUT "Probably I need to answer that question. A year ago, we had a workshop. Maybe some of you weren't on the Planning Commission at the time, but we had a workshop on access management. We brought in a professor from Texas. He sent excerpts of the study and workshop that he did with you. I think we have a video if anyone wants to take it home and watch it, and we have pointed out from time to time that the Comprehensive Plan and the Subdivision regulations call for joint access and the sharing of access and driveways in this manner. We also have a City Council who told us, over a year ago that they wanted us to do a better job with access management.

We had two cases, this case and the next week following it, actually it was this last Tuesday, we had another case which was similar at 55th and Broadway. Some of you will remember that case where we again asked for that property owner to share his access with the properties to the north and west and he didn't want to do that. We didn't make him do that, so I felt like here we have two classic issues where the Planning Commission is not paying attention to your Subdivision Regulations and the Comprehensive Plan and if we have on our work plan that we are going to continue to develop guidelines in this area, but if we are not going to pay any attention to it at all, it doesn't make sense for us to spend any more time on it. So I felt like this was an appropriate time to bring the issue to the City Council's attention and see whether they cared or not. They cared enough to send it back to you for reconsideration.

The second case, when we told the applicant we were going to ask them to do the same thing at 55th and Broadway, they came in and we negotiated an agreement on that before the City Council meeting where that owner who owns the property to the north and the west corner lot agreed that he would put a covenant down on those properties to the north and west that those properties would be permitted cross-lot access for this corner lot to be able to share access and use the driveways and properties to the north and the west. Again, that was a little bit of a compromise, but we felt like that accomplished what we were trying to achieve in the Subdivision regulations and the Comprehensive Plan.

So I took it on myself to say that this was a policy issue. I thought that the Planning Commission was not paying a lot of attention to it and it would be their decision because it is not an issue of dedicating streets, it is an issue of design of the

plat, and that is something that the Planning Commission is responsible for, but it is something that I asked for them to send back to you so you could take another look at it."

MICHAELIS "I think it may help, in the future, then, if part of the Comprehensive Plan or part of the regulations was if we could come up with a list of streets or a map layout where this is going to be pretty much a rule, because I don't think we can just say carte blanche everywhere in the City that this is going to be applicable. Is that a possibility?"

KROUT "Well, I think that is what Jamsheed is going to try to work on as soon as he gets staffed up is to try to develop some more details about where and what circumstances are more appropriate, to give developers a little better idea about when they can expect this, but we are expecting West Street to be one of the highest traffic volume streets in the City in the future in this area between Kellogg and Central with over 30,000 cars per day. So this is one of those areas where special attention does need to be taken."

MICHAELIS "I just want to continue my question. If the City Council wanted to right now they could say 'okay, Marvin, we think what you are wanting to do here is correct and we are just going to go ahead and pass it', they could do that, can't they?"

KROUT "Well, I guess I will go on record as saying 'no, I don't think so'. I think it would be beyond their jurisdiction to require something that is in Chapter 7 in the Subdivision regulations that the Planning Commission has agreed with. Their limitations, by statute, are to accept or reject dedications of land right-of-way. They also, according to our Subdivision regulations, and some might argue with this, but they have the ability to waive improvement requirements. This is neither one of those, so this is the Planning Commission's jurisdiction and if you said today, 'I know you have worked this out, but we don't want to accept this agreement', I think that that is the end of it. I don't think the City Council really has the authority to override you when it comes to this issue. They could accept the agreement, but I don't think they could override you."

WARREN "In Section 7 of the Subdivision Regulations, in part it says 'the number of permitted access points shall be permitted by the Planning Commission, based on the recommendations of the City Engineer and the jurisdiction of the Planning staff'. In other words, our recommendation, according to this thing, is limited to what the engineer said and what the staff said. I think it needs to read 'and consideration of the applicant's circumstances. I think that is what you are saying, Jerry. We periodically have circumstances."

This is a case where circumstantially the guy had no control over that land to the south of him, and yet we were asking him to share an opening. The actual motion that was made was we said 'the Planning Commission approves the plat, subject to the applicant providing a document to MAPD stating that he would look with favor on a request for a joint-access easement from the adjoining property owner to the south'. I think we were recognizing there that we want him to do that, understanding that he has no control over that land to the south of him, and therefore can't really agree to the joint access. Those were our reasons, and to assume that the Planning Commission is going to be limited today, tomorrow, and in the future to the recommendation of the Engineer and the Planning Staff with no other consideration, I think is ridiculous. I think we should have other options dealing with special circumstances."

JOHNSON "Marvin, if this was done the way you wanted it done, and the owner that has the plat in front of us today agrees to a cross-lot agreement, that doesn't mean that that driveway has to be moved though, either, does it? If they could work out something where the drive-way could stay where it is and not move a pole, not do anything, as long as they are not adding another driveway."

KROUT "I am not sure how you have the language drafted, but I suppose it is possible that this existing driveway 24 feet to the north could be a shared driveway. I will leave that as an option. It is more likely that this owner might be interested in seeing the driveway moved to the south."

JOHNSON "That would be up to him and the property-owner to the south versus us putting a requirement that automatically kicks in and you have to spend 'X' number of dollars to move it when it might work where it is. That is the only thing I have to say."

MICHAELIS "Good point."

WARNER "If we are requiring it to do it as it was passed, wouldn't he have to be on the north property line and move the poles anyway?"

KROUT "That's right."

WARNER "We have already compromised."

KROUT "Yeah, and I don't think anyone realized, including the applicant at the time, that as it was approved by the Planning Commission originally, it is not the way he has it planned and the way he brought up his landscape plan, and he will probably be back to you asking to vacate access control if we didn't stop him for this reason and then realize, as we are looking at his landscape plan that he had another problem."

WARREN "I didn't hear the question, what was it?"

WARNER "What we approved originally was that he was to put his access on the south property line, which would mean that he would have to move the utilities and whatever he is trying to avoid doing now, right?"

GAROFALO "And that was agreed to at the Subdivision Committee meeting?"

WARNER "Yeah, and I don't see what, other than the agreement for a joint access what staff is asking is out of line at all. If he did what we voted for him to do, he has to put it on the south line and he has to move that stuff."

WARREN "I think he has agreed to that."

WARNER "He didn't agree to it or he would have moved it over."

OSBORNE-HOWES "Has he agreed to this? Oh, okay."

GAROFALO "He apparently has agreed to it now, after you have gotten together. Okay, let's hear from the applicant's agent."

BOB KAPLAN "I am here for the applicant. Let me make one thing clear. I will be very quick. In the first place, it is my opinion that platting jurisdiction is with the Metropolitan Area Planning Commission. The City Council has no legal authority whatsoever to invoke their jurisdiction over plats. That is final at this level. It is one of the few instances where you have final jurisdictions over platting. That is by State statutes. I told the City Council Tuesday or whenever this matter was up, that in my opinion, there was no authority for the City Council to refer this matter back. They cannot do that. They can accept dedications; they can deny dedications; they can modify dedications with an explanation to the Planning Commission. That is all they can do under the statutes."

Mr. Rebenstorf disagrees with me. He told the City Council they could refer it back, and they did. I was going to appeal the decision and Mr. Krout and his staff came to me with this agreement, which is actually advantageous to my client. Because if we do relocate the driveway, the utilities, the pole; if we do all of that, we have no expense. Whether or not the City can do what they are doing to the south property owner, I don't know, and I don't care because it is not my problem. My guy puts the driveway to the north, avoids the relocation as Commissioner Warner suggested. It is consistent with the original motion that was made to approve it by Commissioner Warren that we wouldn't have to share it if we had these high-traffic density uses and we have identified those.

So we are happy with it, and we are going to ask you to approve it. I am satisfied. I don't appeal the case. My client moves forward with his building. He has been trying to get this done since July of 1999. Yes, we are in agreement with it, and I would ask that you approve it, but as a matter of record, if the City Council does this again, in a case in which I am involved, I will probably appeal it because this is your jurisdiction, it is not City Council jurisdiction."

HENTZEN "Mr. Kaplan, could you state what you have agreed to? Not any justification, just what is it?"

KAPLAN "All right. The plat will be approved as presented and as you previously approved it with one additional condition. The additional condition, which is the subject of the agreement, Bud, is this: That if the south property is developed and if that development does not take the form of a service station, a convenience store, a drive-in restaurant, a bank, or a similar high traffic generator, we will agree to relocate the driveway, splitting the property line on the south and share the driveway with the south property developer, but at no expense to my client for the relocation of the driveway, the reconstruction of the driveway, or the relocation of the two utilities, the gas regulator and the power pole. I find that acceptable and actually, advantageous."

KROUT "The other change to the plan is that we are expanding where you can put your access control on the south end so that you can move that driveway."

KAPLAN "That is correct. We are not being required to locate it on the property line, so we do not have the expense of relocating the appurtenances. So my guy likes it."

GAROFALO "Let me ask you this. Has the south property owner been talked with on this?"

KAPLAN "Not by me."

KROUT "He will have to come in for zoning first, and then he will have to plat the property. Then we will get to have this discussion all over again."

MICHAELIS "Can we require those kind of restrictions on him without his knowing about it?"

KROUT "It will be your choice and it will be up to the applicant and you, or whoever is on the Planning Commission at the time to decide what is the appropriate way to treat that property to the south. You may decide that even though we have this agreement that that property owner to the south is entitled to his own access point and we are not going to do this. That is a separate decision."

MICHAELIS "So we can look at it at that time and it wouldn't be tied to this. Okay."

KROUT "What we are trying to do with these incremental development, separate ownerships over time is to keep options open for the future."

LOPEZ "If I heard you correctly, you agreed to the modified language which would be the relocation of the driveway to the south shared and the relocation of the utilities. The portion that would be on your client's property would cost him nothing? That is what you are agreeing to?"

KAPLAN "Correct."

LOPEZ "Okay. That's all."

PLATT "You used the word 'shared' on the driveway."

LOPEZ "Yeah, but I said the shared part to the north and the cost of the utility. It won't cost them anything."

PLATT "The driveway, too, not just the utilities?"

LOPEZ "Yeah."

HENTZEN "May I ask staff, do you accept this recommendation?"

KROUT "Yes. We are in agreement."

HENTZEN "Okay, then."

GAROFALO "Is there anyone else here to speak on this item? Okay."

MOTION: That the Planning Commission recommend to the governing body that the modified language be accepted as recommended by staff, allowing the driveway to be moved 24 feet to the north of where it is currently shown on the plat.

MICHAELIS moved **JOHNSON** seconded the motion.

KROUT "We are asking him to file this agreement, too."

LOPEZ "This agreement, as I understand it, is passing the economic burden on to the property owner to the south who knows nothing about this now."

MICHAELIS "Not necessarily. That decision will come whenever that property comes up for platting. They may not even want an access on the north. They may be happy with one access."

LOPEZ "That's avoiding the issue of joint access altogether, then."

MICHAELIS "Then we wouldn't need it."

LOPEZ "What, the joint access or the issue that we are trying to deal with on major arterials and limiting the number of accesses."

MICHAELIS "Well, we are accomplishing what staff wants to accomplish and we are accomplishing what the applicant wants to accomplish. I don't see the problem."

GAROFALO "I just want to make sure that the property owner on the south, at some point will have some say about it."

MICHAELIS "He will."

GAROFALO "If he will, then that makes me happy."

HENTZEN "Before we take a vote on this, Mr. Chair, I would like to say something to the Commission. I have decided that we are a very mobile society. We have lots of cars, and we are going to have more. Normally, everything that comes up here dealing with cars, and I think there is a salvage operation on our agenda today dealing with old cars; or car lots, or anything else like that, but what I am thinking about is that I personally see an advantage to having a decent access management. The Traffic Engineers and those that are trained in it should be able to tell us what the best thing is to do. And we should listen to them if we can. It is not an issue of denying people the right to their property or anything like that, but I am just saying that this access management, I think, is a good part of the Transportation Plan. So I just want you to know that, that I am not going to quibble very long about shared driveways or access roads, but I think we have to follow a good access management plan, or we are going to be in deep trouble."

PLATT "I want to be clear on the motion. Is there anything in the motion that says that when the property owners to the south want to replat, that the property owners to the south will be responsible for moving all of the utilities and paying for both sides of the joint access drive?"

MICHAELIS "I don't want to make that part of the motion. I want to leave that up to that individual at that time."

KROUT "You can't put any burden from this plat onto someone else's property."

PLATT "Okay. I just wanted to be sure."

GAROFALO "Is there any other discussion?"

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition.

3. **Case No. CU-568** - Jim Lattin and Donna Lattin (owner); Terra Tech Land Surveying, Inc. c/o Michelle Goodrich (agent) request Conditional Use to allow warehouse, self-service storage on property described as:

That part of the Southeast Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, lying East of K-15 Highway Right-Of-Way, EXCEPT the following described tracts:

Beginning at a point 545 feet South of the Northeast corner of the Southeast Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence with an angle to the right of 90°, 327.06 feet more or less to the Easterly Right-of-Way of K-15 Highway; thence Southeasterly along said Right-of-Way to a point 295 feet South of the Point of Beginning; thence East 263.7 feet more or less, to the East line of said Southeast Quarter; thence North 295 feet to the Place of Beginning.

AND

Beginning at a point 840 feet South of the Northeast corner of the Southeast Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence South on Section line 981.27 feet; thence with a deflection angle to the left of 77°37'30" for a distance of 51.47 feet to the Easterly Right-of-Way of new state Highway K-15; thence Northwesterly along said Right-of-Way to a point perpendicular from point of beginning; thence East 263.7 feet to Place of Beginning.

AND

Beginning at the Northeast corner of the Southeast Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence South 216 feet; thence West at right angles to the East line of said Southeast Quarter, 368.3 more or less to the Easterly line of K-15 Highway; thence Northwesterly along said K-15 Highway, 219.4 feet more or less to the North line of said Southeast Quarter; thence East 445 feet more or less to the Place of Beginning.

AND EXCEPT

The East 40 feet thereof taken for road.

AND

That part taken for Highway Right-of-Way in Condemnation Case #A-78971, Deed Book 1396 at Page 169 and Deed Book 1407 at Page 271. Generally located north of 63rd Street South, between Oliver and K-15.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report and the addendum.

BACKGROUND: The applicant is requesting that a 2.5-acre tract of property zoned "LC" Limited Commercial" be approved for a "Conditional Use" for warehouse, self-service storage. The application area is located north of Derby, along the frontage road on the eastern side of K-15. The property also has frontage on Oliver. The owners live on the property in a single-family dwelling, that is zoned "LC" and is included within the boundary of the requested "Conditional Use".

Several properties in the vicinity of the proposed mini-warehouse area are used in a similar manner. The property directly across the street to the north is zoned "LI" Limited Industrial and has mini-storage. The property to the north of this site is zoned "OW" Office Warehouse and has outdoor storage. Another property approximately ¼ mile to the southwest, DP-223 Kuhn Co. Commercial C.U.P., also has warehouse, self-storage and outdoor storage of trailers, boats and RVs. Additional commercial activities in the vicinity include construction sales and service businesses, specializing in overhead doors and in dry stripping of wood.

In addition to the commercial uses, there are residences scattered in the triangular tract of land that is situated between K-15 and Oliver, extending from 55th Street South to 63rd Street South. The land to the east of Oliver is in agricultural use, but likely to develop soon with the recent relocation of the major arterial from Oliver to the new "Buckner". It has been approved for "B-5" Restricted Commercial Warehousing and Limited Manufacturing District by the City of Derby. The land west of K-15 from the application area is in agricultural use.

The property is within the Derby Zoning Area of Influence. The corporate boundaries of Derby have been extended to the land directly across Oliver from the application area.

Additionally, the application area is located in Airport Overlay District III South ("A-O III-S"). The intent of the Airport Overlay District is to ensure a compatible relationship between McConnell Air Force base operations and land uses in the

vicinity of the base. This is done by reducing, to a minimum, the kind of land uses that could potentially concentrate large numbers of people underneath the runway takeoff and approach paths, where aircraft accidents are most likely to occur. Warehouse, self-service storage, is one of the uses permitted in this area because it generates a relatively low volume of customers at any given time.

The applicant will need to comply with the special restrictions in the Unified Zoning Code, including providing a minimum of five off-street parking spaces, to be increased on the basis of one space for each 8,000 square feet of floor area plus one space per employee. All drives, parking, loading and circulation areas are to be paved. The restrictions also cover the directing of lighting toward the use and away from other property, prohibiting outside storage unless the property has the correct zoning for this use, prohibiting garage sales and repairing of vehicles and equipment, limiting signage to one per arterial frontage not exceeding twenty feet in height nor 50 square feet in size and not projecting over the right-of-way, policing the area for trash and debris, and limiting maximum lot coverage to no more than 45 percent of the lot area. A resident manager is required on the site and is responsible for maintaining the operation in conformance with the conditions of approval.

The site plan shows two mini-storage unit buildings. A single row of 15 storage units is situated with a solid wall along K-15 to screen the door openings from direct view. The other building is double-loaded with 42 storage spaces to the east. The applicant proposes that the residence on the northeast of the property be used for the resident manager required by the "Conditional Use".

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "LI" Limited Industrial Warehouse, self-service, construction service business
EAST: "RR" Rural Residential Agricultural
SOUTH: "LI" Limited Industrial Construction sales and service
WEST: "RR" Rural Residential Agricultural

PUBLIC SERVICES: The site has access to K-15 via the frontage road that extends to 55th Street North. Traffic counts are not available for the frontage road, but 1995 traffic volumes along K-15 at 55th Street South were 20,940 ADTs. Estimated traffic volume for 2020 for K-15 was 22,752 ADTs, but this is reflective of traffic on K-15, not on the frontage road. Rural water is available from Rural Water District #3. Public sewer is not available currently, although it might become available due to the significant amount of development projected to occur in the area to the east of the site that might result in sewer line extensions by the City of Derby. The applicant will have to obtain approval and permits for on-site facilities from the Health Department.

CONFORMANCE TO PLANS/POLICIES: The "Sedgwick County Development Guide" of the Comprehensive Plan identifies this property as "low density residential," and as being on the edge of the Derby Small City Growth Area. Derby's Comprehensive Plan Update 1995-2010 recommends this area as "Suburban" and also is on the edge of Derby's urbanizing area.

RECOMMENDATION: Based on the existence of similar activities in the vicinity of application area, the compatibility of this use with the "A-O III-S" land use restrictions, and the information available prior to the public hearing, Staff recommends the application be APPROVED, subject to platting within one year and subject to the following conditions:

1. The uses on this property shall be limited to warehouse, self-service storage and those uses permitted in both the "LC" Limited Commercial District AND the "A-O III-S" Airport Overlay District. The applicant shall comply with the conditions specified in Section III-D.6.y of the Unified Zoning Code.
2. The property shall be developed in general conformance with the site plan, attached hereto and made a part of this application.
3. A Landscape Plan for the property shall be developed that includes a landscape street yard along the western property line. This shall consist of a landscaped area of 5,000 square feet with 10 shade trees, 2-inch caliper at time of installation, or equivalent. Two ornamental trees, 1-inch caliper, or ten (10) shrubs, two-gallon and 18" high at time of installation, would be equivalent to one shade tree. Shrubs can be used to substitute for up to one-third of the total shade tree requirement.
4. A six-to-eight foot tall screening fence, constructed to prevent the passage of light and debris, shall be erected along the perimeter of the project at the required setback line wherever the buildings do not provide the necessary screening along K-15 and Oliver. Said fence shall be constructed of either brick, stone, architectural tile, masonry, wood or other similar material (not including woven wire).
5. Signage shall be limited to one per arterial street frontage. Signs shall not exceed twenty feet in height nor exceed fifty square feet in gross surface area. Signs shall not project over the public right-of-way. No portable signs, bright colored fences, string-type banners, pennants, or lights shall be permitted.
6. A resident manager shall be required to live on this tract. This manager shall be responsible for maintaining the operation of the facility in conformance with the conditions of approval. In the event the existing residence is no longer used for this purpose, a separate resident manager facility shall be provided on-site.

7. Any violation of the conditions of approval shall render the "Conditional Use" permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning to the north and south is zoned "LI" Limited Industrial and is developed with similar mini-storage uses, outdoor storage, and construction sales and service businesses, interspersed with residences. The area west of K-15 is agricultural; the area to the southwest is another similar business to that proposed by the applicant. The area to the east is vacant (agricultural) but has been approved for B-5" Restricted Commercial Warehousing and Limited Manufacturing District. It is anticipated that it will be developed in the future, particularly with the recent relocation of Oliver eastward, improved to county two-lane arterial standards.
2. The suitability of the subject property for the uses to which it has been restricted: The property has been used as "LC" Limited Commercial without approval of the "Conditional Use".
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" would not be expected to generate detrimental effects on surrounding properties since it would be similar in character to existing uses in the vicinity.
4. Length of time the subject property has remained vacant as zoned: The property has been zoned "LC" Limited Commercial, but occupied on the northeast corner by a residence. The occupants of the residence own the entire tract and intend to operate the mini-storage business.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the "Sedgwick County Development Guide," which identifies the area for "low density residential", despite the presence of existing business of similar character nearby. It is in conformance with use restrictions for Airport Overlay District III-3. Derby's Comprehensive Plan identifies the area as "Suburban", but the approval of "B-5" zoning across Oliver indicates a policy of non-residential use nearby.
6. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal due to the low volume of potential water usage and sewage disposal requirements generated by the proposed use. Traffic volume increases also would be minimal.

The Derby Planning Commission met on this case on March 23, 2000. It voted to approve the request (8-0), with the following changes to Staff recommendations:

That part of the Southeast Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, lying East of K-15 Highway Right-of-Way, EXCEPT the following described tracts:

- 1) Wood not be allowed as a possible screening material in condition #4 and instead screening be achieved through the use of wrought iron and shrubbery as proposed by the applicant and
- 2) Condition #3 be amended to include the additional sentence regarding review and approval of a landscape plan by the Director of Planning (MAPD).

The applicant proposed to shift the storage units farther to the south of the site in order to utilize the site more efficiently, and to place wrought iron fencing in combination with shrubbery along the northern and eastern edges of the concrete drives around the storage units. A copy of the revised site plan is attached.

Based on the recommendations of the Derby Planning Commission, Staff has revised our recommendation as follows:

Based on the existence of similar activities in the vicinity of application area, the compatibility of this use with the "A-O III-S" land use restrictions, and the information available prior to the public hearing, Staff recommends the application be APPROVED, subject to platting within one year and subject to the following conditions:

1. The uses on this property shall be limited to warehouse, self-service storage and those uses permitted in both the "LC" Limited Commercial District AND the "A-O III-S" Airport Overlay District. The applicant shall comply with the conditions specified in Section III-D.6.y of the Unified Zoning Code.
2. The property shall be developed in general conformance with the site plan, attached hereto and made a part of this application.
3. A Landscape Plan for the property shall be developed that includes a landscape street yard along the western property line. This shall consist of a landscaped area of 5,000 square feet with 10 shade trees, 2-inch caliper at time of installation, or equivalent. Two ornamental trees, 1-inch caliper, or ten (10) shrubs, two-gallon and 18" high at time of installation, would be equivalent to one shade tree. Shrubs can be used to substitute for up to one-third of the total shade tree requirement. The Landscape Plan shall be submitted for approval to the MAPD Director of Planning prior to construction of the buildings.
4. A six-to-eight foot tall screening fence, constructed to prevent the passage of light and debris, shall be erected along the perimeter of the project at the required setback line wherever the buildings do not provide the necessary screening along K-15 and Oliver. Said fence shall be constructed of either brick, stone, architectural

tile, masonry, wood, or other similar material (not including wood or woven wire), or wrought iron combined with landscape shrubbery.

5. Signage shall be limited to one per arterial street frontage. Signs shall not exceed twenty feet in height nor exceed fifty square feet in gross surface area. Signs shall not project over the public right-of-way. No portable signs, bright colored fences, string-type banners, pennants, or lights shall be permitted.
6. A resident manager shall be required to live on this tract. This manager shall be responsible for maintaining the operation of the facility in conformance with the conditions of approval. In the event the existing residence is no longer used for this purpose, a separate resident manager facility shall be provided on-site.
7. Any violation of the conditions of approval shall render the "Conditional Use" permit null and void.

GOLTRY "This case was deferred from the March 30 meeting. The applicants have applied for this application to build two small mini-warehouse buildings on their existing 2.85 acres tract that has their house on it. Their house is going to be located in the eastern corner and the storage down in here (indicating). It is compatible with some of the surrounding land uses. We have mini-storage warehouses in this tract (pointing to the tract to the north). We have some more types of outdoor storage units in this tract (next tract to the north) and then when you get into this neighborhood (farther north), you have a scattering of residential units. This area also lies within Airport Overlay District No. 3 south, which restricts the intensity of development that is used if it would result in a lot of people being present at any given time. That means that uses that would generate a lot of customers for commercial uses or residential uses that would generate a lot of people living in the area are not allowed. Mini-warehouse storage units are a very good use for the airport overlay districts.

At the Derby Planning Commission meeting on March 23, they reviewed the recommendation of MAPD staff and they made some suggested changes. If you will refer to it in your packets, the first two pages you have received are an addendum that I provided you with last time that incorporates the changes requested by Derby to our original set of recommendations.

I will just briefly highlight those. That is that they not be allowed to use wood as a screening material and that their screening be allowed to be around the perimeter of their project rather than along the building setback lines so that since their mini-warehouse storage units won't occupy the entire 2.5 acres, they will be screening the area that is occupied by it. They will be screening it with a combination of the backs of the storage unit buildings and wrought iron, as I understand it. The other changes, they wanted us to tighten up a little bit on how we would approve the landscaping plans. That is because the County does not have a landscape ordinance, but Derby had specifically requested that we include landscape requirements on this plan since it would fall kind of outside either one's jurisdiction."

GAROFALO "Donna, before you go to the slides, in Condition No. 4 in the staff report on Page 4, the wood would have to be...or would we have to take that whole last sentence out?"

GOLTRY "If you can look at the page (that looks like the memo) you can see where I have stricken some of the words out of Condition No. 4. I have stricken the phrase 'at the required setback line' to address the issue that the screening would be...."

GAROFALO "That did address it?"

GOLTRY "Yes, there, and I have also stricken the word 'wood'."

GAROFALO "That is fine. That is what I was getting at."

BARFIELD "I have a question on that. In making that change, is that consistent with what is presently there? You made mention of the fact that there are other self-storage units already there."

GOLTRY "Is it consistent with other self-storage units in the area? I can say that there is not a consistency between the other self-storage units in the area. For instance, Kuhn, which is southwest across K-15 has concrete screening walls around the perimeter of their project. The property immediately to the north is oriented so that the backs of the buildings are along K-15. It provides the screening in that manner. The property to the north has only a chain-link fence at this time and I have heard comments from both Derby and from other people that, possibly, it is not in compliance with what it was supposed to have been at the time of development. But that is really outside the scope of this for me to investigate as part of this case; just to point out that 'yes, there is a variety of styles of screening that are being used'. And this won't be the most rigorous, but it certainly will be nice-looking.

There was a site plan presented at the Derby Planning Commission. Their revised site plan, which slides the units south a little bit further to the south property line and shows the concrete areas where the screening would be accomplished around the perimeter of the site is the one that has also been attached to the memo you were provided last time. Are there any additional questions?"

HENTZEN "What is the current zoning?"

GOLTRY " 'LC' Limited Commercial."

HENTZEN "It is 'LC' where that house is?"

GOLTRY "Yes, it is."

HENTZEN "How many units will there be?"

GOLTRY "I believe it was 42 units."

HENTZEN "I wanted to ask you about that requirement that the resident manager has to be there. At what level of units do you decide that?"

GOLTRY "I believe that it is just for any of the 'LC' or 'GO' mini-storage units in the Zoning Code."

HENTZEN "I imagine the owners of that house are the owners proposing this."

GOLTRY "Yes, they area."

HENTZEN "What if they get old and don't want to run it any more and want to sell the storage units? Are we going to require a resident manager there?"

GOLTRY "That would be typical. That is what we have required in the other 'LC' storage units that are Conditional Use."

HENTZEN "And is that attached to the zoning?"

GOLTRY "To the Conditional Use. It is part of the Conditional Use application."

HENTZEN "Aren't there quite a few storage units that don't have resident managers?"

GOLTRY "A lot of them would be zoned 'GC' General Commercial."

KROUT "I think in the heavier zoning districts General Commercial and Industrial it is not permitted, years ago, I think before my time, a decision was made to say 'maybe we can allow mini-warehouses in Office and Commercial districts but subject to conditional use and review them one a time because they generally are going to be closer to residential areas. One of the standard conditions of approval that was suggested in the ordinance is that there be a resident manager. I think that is because sometimes these uses tend to get out of hand if they are not managed by someone who is on the property. There has been everything from rock bands to contraband, and everything in between. There have been people living in them sometimes. So if they were going to be in the lighter districts near to residential, the idea was that they would have resident managers. So as a standard condition, the way it could be, someone would have to get a variance from the BZA if they want to waive that requirement, according to the ordinance. I think there are some good reasons for it but if they felt like they couldn't live with that condition they could have asked for General Commercial or Industrial zoning. I think, though, that there is some good reason for there to be a resident manager with these uses."

HENTZEN "Well, if they are stringent enough, they will never know what goes on there."

GOLTRY "Condition 'Y' is the Conditional Use requirements for mini-warehouses and in 'Y' No. 17 it says 'a resident manager shall be required on site and shall be responsible for maintaining the operation of the facility in conformance with the conditions of approval'. That is required for all mini-storage warehouses in either 'GO' or 'LC'."

LOPEZ "On your revised drawing here, on the screening fence requirement, where is it indicated where the screening fence would be?"

GOLTRY "Where would it be located? It would be located along the edge of the concrete where the concrete interfaces with the yard area."

LOPEZ "Right here? It would be required all along that area?"

GOLTRY "Yes."

LOPEZ "All sides?"

GOLTRY "Yes. Actually, I think that they would definitely need to screen on the north part and on the south part where they have visibility to their overhead doors, and then maybe a little bit more, but they wanted to go ahead and put the wrought iron fence all the way around for security reasons."

GAROFALO "Okay. Donna do you have more to present?"

GOLTRY "No, just questions."

GAROFALO "Okay, let's hear from the applicant or agent then."

Marnell arrived at 1:20 p.m.

MICHELLE GOODRICH "I am with Terre Tech Land Surveying for the applicant. I would like to clarify that screening comment on the wrought iron fence. That is called out to be on the north and east sides of the concrete. We are not going to horseshoe it around it around to the south side. The east side would extend down until it intersected the south property line. I believe the applicant is just going to have a regular boundary line fence, probably a 6 foot privacy fence along that south side."

LOPEZ "That is a probability, not an assurance?"

GOODRICH "Well, see, Derby says they don't want wood, but they haven't addressed the south property line."

LOPEZ "And you are addressing the south property line. It is understood right now that it is going to follow that concrete."

GOODRICH "The staff comments say that it follows the north and east boundary lines. It is on the first page. It says 'to place wrought iron fencing in combination with shrubbery along the north and eastern edges of the concrete drives around storage units'. That is what we agreed to at the Derby Planning Commission meeting. Evidently there is a problem with the south neighbor. We really want more than wrought iron to separate us from the south neighbor as far as screening goes."

WARREN "It would seem to me that Item No. 4 doesn't require wrought iron, it simply gives it as an option. It looks to me like that said fence shall be structured in either brick, stone, architectural style, masonry or other similar material or wrought iron combined with landscaped shrubbery. It looks to me like all of those are options."

GOODRICH "Except at the meeting in Derby, they said absolutely no wood for screening."

WARREN "I understand. Excluding wood and woven wire, but anything else is all right."

GOODRICH "But also, the only lines that were addressed at Derby were on the north and on the east. So we are saying that we do want to do wrought iron on the north and the east with shrubbery, and that is going to look real nice, but we would like to provide a little more screening from that south adjoiner. We would like to go with a 6 foot privacy fence."

GAROFALO "You are in agreement with all of the other conditions?"

GOODRICH "Yes, we are."

GAROFALO "Okay. Are you finished? Okay. Are there any other questions? Is there anyone else to speak in support of this Conditional Use permit, other than the applicant? Is there anyone here to speak in opposition? Okay, then we will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The zoning to the north and south is zoned "LI" Limited Industrial and is developed with similar mini-storage uses, outdoor storage, and construction sales and service businesses, interspersed with residences. The area west of K-15 is agricultural; the area to the southwest is another similar business to that proposed by the applicant. The area to the east is vacant (agricultural) but has been approved for B-5" Restricted Commercial Warehousing and Limited Manufacturing District. It is anticipated that it will be developed in the future, particularly with the recent relocation of Oliver eastward, improved to county two-lane arterial standards. The suitability of the subject property for the uses to which it has been restricted: The property has been used as "LC" Limited Commercial without approval of the "Conditional Use". Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" would not be expected to generate detrimental effects on surrounding properties since it would be similar in character to existing uses in the vicinity. Length of time the subject property has remained vacant as zoned: The property has been zoned "LC" Limited Commercial, but occupied on the northeast corner by a residence. The occupants of the residence own the entire tract and intend to operate the mini-storage business. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the "Sedgwick County Development Guide," which identifies the area for "low density residential", despite the presence of existing business of similar character nearby. It is in conformance with use restrictions for Airport Overlay District III-3. Derby's Comprehensive Plan identifies the area as "Suburban", but the approval of "B-5" zoning across Oliver indicates a policy of non-residential use nearby. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal due to the low volume of potential water usage and sewage disposal requirements generated by the proposed use. Traffic volume increases also would be minimal.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The uses on this property shall be limited to warehouse, self-service storage and those uses permitted in both the "LC" Limited Commercial District AND the "A-O III-S" Airport Overlay District. The applicant shall comply with the conditions specified in Section III-D.6.y of the Unified Zoning Code.
2. The property shall be developed in general conformance with the site plan, attached hereto and made a part of this application.
3. A Landscape Plan for the property shall be developed that includes a landscape street yard along the western property line. This shall consist of a landscaped area of 5,000 square feet with 10 shade trees, 2-inch caliper at time of installation, or equivalent. Two ornamental trees, 1-inch caliper, or ten (10) shrubs, two-gallon and 18"

high at time of installation, would be equivalent to one shade tree. Shrubs can be used to substitute for up to one-third of the total shade tree requirement. The Landscape Plan shall be submitted for approval to the MAPD Director of Planning prior to construction of the buildings.

4. A six-to-eight foot tall screening fence, constructed to prevent the passage of light and debris, shall be erected along the perimeter of the project wherever the buildings do not provide the necessary screening along K-15 and Oliver. Said fence shall be constructed of either brick, stone, architectural tile, masonry, or other similar material (not including wood or woven wire), or wrought iron combined with landscape shrubbery.
5. Signage shall be limited to one per arterial street frontage. Signs shall not exceed twenty feet in height nor exceed fifty square feet in gross surface area. Signs shall not project over the public right-of-way. No portable signs, bright colored fences, string-type banners, pennants, or lights shall be permitted.
6. A resident manager shall be required to live on this tract. This manager shall be responsible for maintaining the operation of the facility in conformance with the conditions of approval. In the event the existing residence is no longer used for this purpose, a separate resident manager facility shall be provided on-site.
7. Any violation of the conditions of approval shall render the "Conditional Use" permit null and void.

WARREN moved, **MARNELL** seconded the motion.

KROUT "What do you intend **unable to hear question**

WARREN "I think all of that is in the staff comments, isn't it?"

BARFIELD "No, she is talking about some privacy fence."

JOHNSON "When we get into discussion, I was going to go back to that."

BARFIELD "Okay."

KROUT "We need to get the applicant and the staff's attention. Is the applicant saying that they want the ability to build a fence on the south property line?"

GOODRICH "Yes."

KROUT "And when you said 'subject to staff comments', the MAPD recommendation allowed a wood fence, but you have the Derby Planning Commission suggesting that wood fences be prohibited, so we just need you to be clear as to what your intention is."

GAROFALO "But she took out wood in the condition here."

WARREN "On the north and east side. And I think what you are saying is do we want to allow wood in opposition to Derby's position?"

KROUT "Right. I just want to make sure that we are clear on what your intention is."

JOHNSON "But there is not a requirement on the south."

MARNELL "It is only required on the north and east."

JOHNSON "And that is what we are dealing with and they have agreed not to put wood there, so we are going along with what Derby said."

KROUT "Derby doesn't mind if there is a wood fence along the south?"

GOLTRY "I wouldn't say that I know the answer to that question because it is very hard to know the answer to what they would say. What I can say is that Derby did not envision the need for the screening fence along the south line at the time because at the time the plan had the buildings a little bit further to the north. So I am not sure that Derby thought through whether or not there would be a fence on the south line that would be wood. Maybe Michelle has some minutes or can speak more to that. I just don't want to put words in Derby's mouth."

WARREN "Marvin if we went with staff comments and we have stricken wood in the required areas, it is not **unable to hear**.

McKay arrived at 1:30 p.m.

MICHAELIS "Your motion just says approve subject to staff comments."

WARREN "I think we are covered like it is now."

GAROFALO "Let me ask this question. Where does it state north and east? On which page?"

GOLTRY "It is right up here on the first page of the addendum. The northern and eastern edges of the concrete drives around the storage units."

GAROFALO "Oh, along the northern and eastern. Okay, I see."

MICHAELIS "And that is what Derby had approved, as long as it wasn't wood. So there is no reason for us to add anything to it."

JOHNSON "And if there is not a requirement on the south, anybody ought to be able to put up what kind of fence they want."

BARFIELD "When I look at this, it says...it talks about the use of wrought iron as proposed by the applicant. Now, the question is, did the initial proposal by the applicant include this privacy fence?"

KROUT "Michelle, do you think that the Derby Planning Commission understood that you wanted to put a privacy fence on the south property line and that they were objecting to that?"

GOODRICH "The only reason we were screening was to screen from the street, and they only asked for screening along the frontage road for K-15 and Oliver. That is what we did was just to reduce it down inside the lot on those two lines that face the Frontage Road for K-15 and Oliver. Now the south property line is heavily planted right now. It has a lot of shrubbery and things like that. The fence that is there is not on the property line. The owner wants to rebuild the fence and put it on the property line. The way the neighbor uses his yard isn't one that you would want to look at all of the time. So they want to put a better fence there. I would think that the only reason that you would screen would be if we were 'LC' and that was residential. But both properties are 'LC', so screening isn't required between those two uses."

KROUT "So you don't think Derby had an objection to use of wood?"

GOODRICH "No. And the only reason I brought this up was because it was commented here that we would wrap the wrought iron fence on all three sides and we never agreed to that."

LOPEZ "Okay, so you are going to along the northern and eastern edge of the concrete drive around the storage unit?"

GOODRICH "Wherever there is not a storage unit, there will be a fence. Until you get down to the southeast corner of the place that is being used for warehouse, we would just continue that line, extend it until it met the south property line."

LOPEZ "You would extend the wrought iron line to south property line?"

GOODRICH "Yes. And then it would be a solid fence made out of wood."

GAROFALO "Donna, could you get the site plan back up on the screen? Let's use the laser and show exactly where the fences are going to be."

LOPEZ "I called the question to end this discussion so we could vote on the motion."

GOODRICH "We don't have the revised site plan on the slides."

GAROFALO "Oh, you don't? Okay."

GOLTRY "This is the revised site plan. (Holding up paper) It was attached to your handout."

MOTION: That the question be called.

LOPEZ moved, **JOHNSON** seconded the motion.

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

MCKAY "I would like for the record to show that I got here late and did not vote on this issue."

4a. Case No. Z-3361 - Storage Pro LLC c/o Bruce Riddle (Owner/Applicant); Baughman Company PA c/o Russ Ewy (Agent) request zone change from "MF-18" Multi-Family Residential on the new parcel; and

4b. Case No. DP-59 Amendment #6 - Storage Pro LLC c/o Bruce Riddle (Owner/Applicant); Baughman Company PA c/o Russ Ewy (Agent) request the amendment to create a new parcel (Farmington Square CUP).

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to the Farmington Square CUP to create a new parcel, Parcel 10, from the western 7.04 acres of Parcel 1 of the existing CUP. The new Parcel 10 is proposed for a zone change from "MF-18" Multi-Family Residential to "GC" General Commercial to permit self-service storage warehouse uses on the west 260 feet of the

parcel and the uses permitted on Parcel 1 for the entire new parcel. The applicant indicated that "GC" General Commercial zoning was requested for the entire new parcel to permit expansion of the self-service storage warehouse use in the future through another CUP amendment.

Self-service storage warehouse is permitted with a Conditional Use (or CUP amendment) in the "GO" General Office and "LC" Limited Commercial districts, but only if the site has direct access to an arterial street. The "GC" General Commercial district is the first district which permits self-service storage warehouse for sites such as the subject property that do not have direct access to an arterial street.

The applicant submitted a site plan (attached) for the proposed self-service storage warehouse development. The site plan shows a self-service storage warehouse facility consisting of 12 storage buildings and an office/residence building. The site plan also shows a "surface parking" area, which is presumably intended for long-term outdoor storage of vehicles and equipment. Access to the site is shown from Shade, an extra-wide local street that intersects with Ridge approximately 360 feet west of the entrance to the facility. The facility is shown to entirely enclosed (except for a 25 foot gap north of the office on the west property line) by a combination of the exterior walls for the storage buildings, a concrete fence filling the gaps between the building walls, and a wrought iron fence and gate along the south line of the enclosed area. The site plan shows a landscaped buffer along the frontage of Shade. The site plan does not indicate how any future expansion of the self-service storage warehouse facility would be sited on the new parcel.

The applicant also submitted building elevations (attached) for the proposed self-service storage warehouse development. The building elevations indicate that all building exteriors will share the same predominate earth-tone color, texture, and exterior building material. The exterior building materials are apparently brick, wood, and metal for the office/residence building and metal for the storage buildings. The building elevations do not include a rear elevation of the storage buildings or any information regarding common exterior building materials proposed to be used on the storage building walls and the masonry wall, which will serve in combination as the perimeter fencing for the development. The building elevations also do not indicate the proposed height of the buildings.

The surrounding area is predominately developed with multi-family residential uses with single family residential and commercial uses also in the area. The most directly impacted properties by the proposed development are several apartment complexes on property zoned "TF-3" Two-Family Residential located to the south and single family residences owned by the City of Wichita and operated as public housing on property zoned "SF-6" Single Family Residential located to the north. West of the subject property is vacant property that is currently zoned "MF-18" Multi-Family Residential with a zoning change to "LC" Limited Commercial that is pending the completion of the conditions of approval (primarily the vacation of access control). East of the subject property is vacant property zoned "MF-18" Multi-Family Residential. The adjoining property to the south, east, and west of the subject property is also within the Farmington Square CUP.

To limit the impact of the proposal on surrounding properties, planning staff recommends that the site be developed in accordance with the development standards in the Unified Zoning Code for self-service storage warehouses in the "GO" and "LC" districts. Planning staff also recommends that approval be subject to review and approval of a revised site plan and building elevations. To preserve options for review of future development at this site, planning staff recommends that the zone change to "GC" General Commercial be limited to the site of the proposed self-service storage warehouse (approximately the west 260 feet of the new parcel). The property is currently platted, and replatting is not recommended by planning staff.

CASE HISTORY: The subject property is platted as Lot 2, Woodland Heights 2nd Addition, which was recorded April 4, 1985.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Single Family
SOUTH: "TF-3" Multi-Family
EAST: "MF-18" Vacant
WEST: "MF-18" ("LC" Pending) Vacant

PUBLIC SERVICES: This site has access to Shade, an extra-wide two-lane local street. Traffic volumes are not available for Shade. Municipal services are available to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zone Code contains development standards for self-service storage warehouses located in the "GO" and "LC" districts to which the subject property is recommended to be held.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit a legal description for the property to be changed to the "GC" General Commercial zoning district that includes approximately the west 260 feet of Parcel 10.
2. Self-service storage warehouse uses on Parcel 10 shall be developed in accordance with Section III-D.6.y of the Unified Zoning Code, with the exception of Section III-D.6.y(1) and Section III-D.6.y.(2).

3. General Provision #18 shall be amended to add Parcel 10 to the list of parcels which are required to comply with the Landscape Ordinance. Additionally, a minimum 15-foot landscape buffer shall be provided along the south, east, and north perimeter of the self-service storage warehouse facility.
4. Prior to issuance of a building permit on Parcel 10, a revised site plan shall be submitted for review and approval by the Director of Planning. The revised site plan shall indicate type and location of perimeter enclosure materials, which shall entirely enclose the self-service storage warehouse facility. The site plan also shall indicate the size and location of the landscape buffer areas.
5. Prior to issuance of a building permit on Parcel 10, revised building elevations shall be submitted for review and approval by the Director of Planning. The revised building elevations shall indicate the wall and roof materials and colors and the building and wall heights. Additionally, the exterior walls of the storage buildings used to enclose the perimeter of the facility shall be of a stamped-brick pattern or similar architectural treatment and shall be of the same texture, color, and appearance as the masonry wall that encloses the gaps between the storage buildings.
6. The proposed uses for Parcel 10 shall be amended to permit a vehicle storage yard on the west 260 feet of the parcel.
7. Outdoor speakers and sound amplification systems shall not be permitted on Parcel 10.
8. General Provision #1 shall be amended to add Parcel 10 to the excepted parcels.
9. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
10. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
11. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-59) includes special conditions for development on this property.
12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is predominately developed with multi-family residential uses with single family residential and commercial uses also in the area. The most directly impacted properties by the proposed development are several apartment complexes on property zoned "TF-3" Two-Family Residential located to the south and single family residences owned by the City of Wichita and operated as public housing on property zoned "SF-6" Single Family Residential located to the north. West of the subject property is vacant property that is currently zoned "MF-18" Multi-Family Residential with a zoning change to "LC" Limited Commercial that is pending the completion of the conditions of approval (primarily the vacation of access control). East of the subject property is vacant property zoned "MF-18" Multi-Family Residential. The adjoining property to the south, east, and west of the subject property is also within the Farmington Square CUP.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "MF-18" Multi-Family Residential and could be developed for multi-family use; however, the site has remained undeveloped for over 15 years since it was zoned "MF18" Multi-Family Residential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance and the recommended conditions of approval for the CUP.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. While not adjacent to an arterial, the site will be subject to development standards which should mitigate the impacts of noise, lighting, and other activity. The Unified Zone Code contains development standards for self-service storage warehouses located in the "GO" and "LC" districts to which the subject property is recommended to be held.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

WARNER "I need to step down on this case. My nephew is involved in it."

GAROFALO "Okay. Let the record show that Commissioner Warner is abstaining."

KNEBEL "The site plan on this shows that the site will have 12 storage buildings, most of which will run north to south with the exception of the one up at the north property line, and then an office and resident manager on the south line with access to Shade and parking, etc., in that area. The perimeter of the site is proposed to be entirely enclosed, either with the exterior of the self-storage building walls or with a masonry wall, which would fill the gaps between those, on three sides, and with wrought iron across the front.

The applicant also submitted some building elevations. Here, on the left, it shows the proposed look for the office and residence, and on the right is the proposed look for the self-service storage warehouses. These elevations we received don't show us what the rear of the buildings would look like and since those are going to be a major portion of the visual impact of the site, staff is recommending that additional building elevations be provided that show the rear walls. The site is primarily in a residential area although there are some commercial properties along the intersection of Central and Ridge and all along Central at that point.

The Planning staff is recommending approval of this. We are recommending that it be developed in accordance with the self-service storage warehouse standards for the General Office and Limited Commercial district. We are also recommending that a revised site plan and revised building elevations be approved by the Planning Director prior to the site being developed.

The applicant has also requested General Commercial zoning for the entire parcel here, yet the site plan proposes self-service storage warehouse only on the west 260 feet. So Planning staff is also recommending that the General Commercial zoning only be approved for the portion of the parcel for which the use is intended. I believe the applicant is in agreement with that. I will let them speak to that. I am available for questions."

GAROFALO "The question I have is on Condition 6 on Page 4. That relates to a statement on Page 2 in the third paragraph, doesn't it?"

KNEBEL "Yes."

GAROFALO "It does relate to that. Okay. And we definitely are talking about outside storage, right?"

KNEBEL "That is correct. On the site plan there is an area here that Commissioner Garofalo is referring to that the applicant wishes to do some outdoor storage here in that portion."

GAROFALO "Are there any other questions?"

OSBORNE-HOWES "Just a quick question. Condition No. 7 has to do with outdoor speakers, that they not be permitted in Parcel 10. This whole area is Parcel 10. Do any of the other parcels allow them?"

KNEBEL "No. It is not specifically excluded from any of the other parcels."

BARFIELD "I don't see anything here about screening on this."

KNEBEL "Actually I failed to mention that. Condition of approval No. 3 refers to a recommended landscape buffer along the three sides of the property, the east, south and north sides, of 15 feet."

GAROFALO "Essentially, this site is right in where there is residential all around?"

KNEBEL "Well, there is residential on three sides, yes, and there is residential zoning on the east side, which is vacant, as well."

GAROFALO "It is a vacant lot, but I mean that is what separates the housing from the vacant lot? It says here 'on the east vacant, and on the west vacant.'"

KNEBEL "Right. Well, actually the west is vacant commercial zoning along Ridge Road. That Parcel 2 on the CUP is zoned 'LC' to the west."

GAROFALO "Are there any other questions? Then we will hear from the applicant or agent."

RUSS EWY "I am from the Baughman Company, agent for the applicant. As Scott mentioned, we are in agreement with staff comments and are in agreement with refining our application area to simply the west 260 feet of that site. I would be more than happy to answer any questions you have."

OSBORNE-HOWES "To the north of that site, where exactly is the single-family? I have driven by and I am pretty familiar with it, but how far away is that?"

EWY "I believe there is a single-family development here, owned by the City of Wichita, beyond this street and beyond the drainage channel, the open ditch that runs through here."

OSBORNE-HOWES "That is pretty close to outdoor storage."

EWY "As you are aware from reviewing most of these self-storage areas, there is a market or need for the storage of RVs in particular, so I don't think we are looking at stockpiling a lot of materials that will be anything short of recreational vehicles or perhaps a boat. Things of that nature. We will be screened as in other self-storage warehouse developments. That area for outdoor storage tends to be centered in the property with the view on the outside screened by other storage buildings, as in this case."

OSBORNE-HOWES "Help me out. I don't see it in the center of the property."

KROUT "Do you mean the site plan back-up?"

OSBORNE-HOWES "Yeah."

EWY (Indicating) "The storage area will be right in here. The surface parking."

OSBORNE-HOWES "That is not exactly centering it."

EWY "Not centering it, but it will be screened from outside view to the north by this building here and by this building here and by this structure here, and by the wall that will be in here."

OSBORNE-HOWES "Will those buildings be higher than the RVs?"

EWY "Yes. Approximately 10-12 feet at the peak of the roof line, yes."

OSBORNE-HOWES "Well, RVs can be a lot taller than that. There is no specification is there, in here, on the height of these?"

KROUT "No, we don't have requirements on height, but if you are at ground level to the north and you are at 5 feet tall and you have a building that is 10 feet tall and then you have another 40 or 50 feet before the first of the RV's, I think there is a plane of vision, and I think the buildings should effectively screen the outside storage."

WARREN "In an effort to try to do what Susan is saying here, do you think there would be objection to those buildings that are in the center to be moved further north and then bring those mobile homes right into the center?"

EWY "I think we would be able to work with the site plan to meet that goal."

WARREN "Put them centered on that lot as opposed to...."

EWY "Right. Rework the site."

MICHAELIS "Just shove those three up to the north."

EWY "Right. As staff mentioned, there will be a secondary review of the revised site plan by Marvin."

OSBORNE-HOWES "Well, would you be willing to offer that?"

EWY "Yes."

GAROFALO "Are there any other questions? Okay. Is there anyone else here to speak on this item other than the applicant or agent? Is there anyone here to speak in opposition?"

LAUREN MIRITELLO "I happen to be a resident of Western Hills which is in the building right on the corner of Shade and Par Lane. The two complexes that are on the south end, which would be Western Hills and Georgetown Courts do not have any sidewalks at all on the complexes. People sometimes like to go for walks for exercising. They like to sometimes go bicycle riding, they walk their children in carriages and they do it out in the street. Many times they go around Par Lane and Shade. I can see where this is going to be an increase in the amount of traffic on Shade and I was wondering if there is a way, if they could put the entrance at a different area instead of off of Shade. Can they bring it in on the back end of Winterset? Or off of Ridge?"

GAROFALO "Excuse me, Ma'am. Scott, would you put the map back up there so we can better understand what she is talking about? Maybe you could point out, Scott, with the laser exactly what she is talking about. Or maybe she can."

MIRITELLO "Okay. Is this Shade? Okay. This is Par. I live right in Western Hills, which is right up there (indicating). See, there are no sidewalks around there, so people would be walking out in the street. It is a wide enough street now, Shade, but when you start having now increased vehicular traffic, you can have small trucks, you can have other trucks, you know. And now they can use it for a storage area, too."

As it is it is kind of dangerous the way people come down there 25 to 30 miles an hour, which they shouldn't, but they do. That would be an increased amount of traffic here."

GAROFALO "You are proposing a different entrance?"

MIRITELLO "If it would be possible, yeah."

GAROFALO "Where would you propose the entrance to be?"

MIRITELLO "Well, I understand that they don't own the parcel on Ridge and that is difficult, but I understand that he owns the rest of it, the other parcels, so why couldn't they have an entrance from an end over on this end, which would be like from around this end (indicating)? There wouldn't be any homes in that area. So something like that?"

I would say that at the corner, the intersection of Ridge, too, and Shade, the traffic is really horrible as it is now. There are accidents there. A recommendation, that possibly a study could be done to put in a center lane or a traffic light. That is all I have."

GAROFALO "Okay. Are there any questions of the speaker? Okay. Thank you. Is there anyone else to speak in opposition? Okay, the applicant or agent has two minutes for rebuttal."

EWY "Well, to address the lady's concerns. First, concerning the amount of traffic that this site will generate, I think we have worked with staff or have limited this proposed development to a relatively small set of storage units. I think, with the understanding that the original Parcel 1, which extends currently in this configuration, and has existed in that configuration since basically 1984, permits upwards of 360 some multi-family units, which would obviously generate a substantial amount of traffic above and beyond what this storage unit is going to generate."

With the concern about traffic at the intersection of Shade and Ridge Road, when Parcel 2 was zoned for commercial purposes and the CUP amended, two or three years ago, one of the requirements on that property was to install and guarantee a left-turn lane into the property. That has been accomplished also. Our office put together that paving petition, so I think once Parcel 2 and the rest of this CUP winds up developing, you are going to find that there is already traffic improvements waiting to be installed. I would be more than happy to answer any other questions that you may have."

BARFIELD "How many units are we talking about?"

EWY "The number of units hasn't been laid out. The number of buildings, there are going to be just over 40,000 square feet of building coverage. The individual units, whether they be 8-foot closet-type units or the traditional 10-foot storage garages has yet to be determined."

GAROFALO "Are there any other questions? Thanks, Russ. We will take it back to the Commission then."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is predominately developed with multi-family residential uses with single family residential and commercial uses also in the area. The most directly impacted properties by the proposed development are several apartment complexes on property zoned "TF-3" Two-Family Residential located to the south and single family residences owned by the City of Wichita and operated as public housing on property zoned "SF-6" Single Family Residential located to the north. West of the subject property is vacant property that is currently zoned "MF-18" Multi-Family Residential with a zoning change to "LC" Limited Commercial that is pending the completion of the conditions of approval (primarily the vacation of access control). East of the subject property is vacant property zoned "MF-18" Multi-Family Residential. The adjoining property to the south, east, and west of the subject property is also within the Farmington Square CUP. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "MF-18" Multi-Family Residential and could be developed for multi-family use; however, the site has remained undeveloped for over 15 years since it was zoned "MF18" Multi-Family Residential. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance and the recommended conditions of approval for the CUP. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. While not adjacent to an arterial, the site will be subject to development standards which should mitigate the impacts of noise, lighting, and other activity. The Unified Zone Code contains development standards for self-service storage warehouses located in the "GO" and "LC" districts to which the subject property is recommended to be held. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall submit a legal description for the property to be changed to the "GC" General Commercial zoning district that includes approximately the west 260 feet of Parcel 10.

2. Self-service storage warehouse uses on Parcel 10 shall be developed in accordance with Section III-D.6.y of the Unified Zoning Code, with the exception of Section III-D.6.y(1) and Section III-D.6.y.(2).
3. General Provision #18 shall be amended to add Parcel 10 to the list of parcels which are required to comply with the Landscape Ordinance. Additionally, a minimum 15-foot landscape buffer shall be provided along the south, east, and north perimeter of the self-service storage warehouse facility.
4. Prior to issuance of a building permit on Parcel 10, a revised site plan shall be submitted for review and approval by the Director of Planning. The revised site plan shall indicate type and location of perimeter enclosure materials, which shall entirely enclose the self-service storage warehouse facility. The site plan also shall indicate the size and location of the landscape buffer areas. The site plan shall also locate the vehicle storage yard in the approximate center of the site. The site shall be developed in general conformance with the approved site plan.
5. Prior to issuance of a building permit on Parcel 10, revised building elevations shall be submitted for review and approval by the Director of Planning. The revised building elevations shall indicate the wall and roof materials and colors and the building and wall heights. Additionally, the exterior walls of the storage buildings used to enclose the perimeter of the facility shall be of a stamped-brick pattern or similar architectural treatment and shall be of the same texture, color, and appearance as the masonry wall that encloses the gaps between the storage buildings.
6. The proposed uses for Parcel 10 shall be amended to permit a vehicle storage yard on the west 260 feet of the parcel.
7. Outdoor speakers and sound amplification systems shall not be permitted on Parcel 10.
8. General Provision #1 shall be amended to add Parcel 10 to the excepted parcels.
9. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
10. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
11. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register Deeds indicating that this tract (referenced as DP-59) includes special conditions for development on this property.
12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

WARREN moved, **HENTZEN** seconded the motion.

GAROFALO "Is there any discussion?"

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition. Warner abstained. Wheeler and Carraher were not present.

5. **Approval of February 10, 2000 MAPC meeting minutes**

GAROFALO "Do we have any changes, corrections or additions on these?"

MOTION: That the Planning Commission approve the minutes of February 10, 2000 as submitted.

OSBORNE-HOWES moved, **WARNER** seconded the motion, and it carried unanimously (12-0).

FRANK GAROFALO, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the

Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

GAROFALO "Is there anyone here to speak on any of the Subdivision items? Seeing none, I will bring it back to the Commission."

6. Subdivision Committee items 6/1, 6/2, 6/3, 6/4 and 6/5 were approved subject to the Subdivision Committee recommendations.

JOHNSON moved, **PLATT** seconded the motion, and it carried unanimously (12-0).

- 6/1.** One-step final plat of VAN HORN ADDITION, located on the west side of 119th Street West, South of 21st Street North.

- A. Prior to this plat being scheduled for City Council review, the Applicant shall submit a request for annexation.
- B. City Engineering needs to comment on the need for any guarantees or easements. The applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. The applicant shall guarantee the installation of the private drive to an all-weather surface.
- F. A definite location needs to be platted for the water line easement on Lot 3 and the west line of the drainage easement on Lot 3.
- G. The contingent street dedication adjoining the plat to the south will be required to be utilized to provide two points of access for City Fire Department and needs to be constructed to an all-weather surface.
- H. City Fire Department requests that "Westport" be designated as a name for the private drive.
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
 - O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
 - P. Perimeter closure computations shall be submitted with the final plat tracing.
 - Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
 - R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional utilities which have been denoted on the final plat.
 - S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Departments.
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6/2. SUB 2000-20 - One-step final plat of BAHAI ADDITION, located West side of Amidon, North of 32nd St. North.

- A. The applicant shall provide a guarantee for the extension of sanitary sewer.
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
 - D. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
 - E. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
 - F. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
 - G. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
 - H. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
 - I. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
 - J. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
 - K. Perimeter closure computations shall be submitted with the final plat tracing.
 - L. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
 - M. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
 - N. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
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- 6/3. DED 2000-05** - Dedication of a Utility Easement from Heath J. Kintzel, for property generally located south of Lincoln and west of Oliver.

LEGAL DESCRIPTION: That portion of Lot 40, Block C, Hilltop Manor, a replat of part of Hilltop Manor Second Addition, lying east of and adjacent to the platted 16-foot easement.

PURPOSE OF DEDICATION: As a requirement of a Lot Split No. 1031, the Utility Easement is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

- 6/4. DED 2000-05** - Dedication of a Utility Easement from Robert Huffman, for property generally located south of 61st Street North, west of Seneca.

LEGAL DESCRIPTION: The north 10 feet of the south 10 feet and the west 10 feet, of Lot 104, Van View Addition.

PURPOSE OF DEDICATION: As a requirement of a Lot Split No. 1036, the Utility Easement is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

- 6/5. DED 2000-07** - Dedication of Street Right-of-Way from Robert Huffman, for property generally located south of 61st Street North, west of Seneca.

LEGAL DESCRIPTION: The east ten feet of Lot 104, Van View Addition.

PURPOSE OF DEDICATION: As a requirement of a Lot Split No. 1036, the ten-foot street right-of-way is being dedicated for Sullivan Avenue.

Planning Staff recommends the granting of this dedication be accepted.

LISA VAN DE WATER, Planning staff, "Agenda Items 7/1, 7/2, and 7/3 were approved by the Subdivision Committee last week. I have no further comments on these requests, but I would answer any questions that the Commission might have."

JOHNSON "I would like for the record to show that I am going to abstain on Item 7/2."

GAROFALO "Okay. Is there anyone here who wishes to speak on any of these items? Seeing none, I will bring it back to the Commission."

MOTION: That the Planning Commission recommend to the governing body that items 7/1 and 7/3 be approved.

MCKAY moved, **LOPEZ** seconded the motion, and it carried unanimously (12-0).

MOTION: That the Planning Commission recommend to the governing body that Item 7/2 be approved. **MCKAY** moved, **WARREN** seconded the motion, and it carried with 11 votes in favor. Johnson abstained.

- 7/1. VAC 2000-00002** - Two Days properties, LLC, c/o Douglas Day, request to vacate portions of two 8-foot utility easements on property described as:

The south 8 feet of Lot 1 and the north 8 feet of Lot 2, Ralls 3rd Addition, Wichita, Kansas, located north of Harry Street and east of Terrace Drive.

The applicant is requesting to vacate two 8-foot utility easements for the future development of Lots 1 and 2, Ralls 3rd Addition.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time March 21, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described utility easements, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the two easements described in the petition should be approved.

The Subdivision Committee recommends approval.

-
- 7/2. VAC 2000-00003** - Henry & Madeline Jacobs; R&D Enterprises, c/o Rob Jacobs request to vacate a 20-foot utility easement, described as:

A utility easement being 10 feet each side of a line beginning at a point 1'N and 13.78'W of the NE corner of Lot 2, Jabob's Addition, Wichita, Sedgwick County, Kansas, thence west parallel with the north line of said Lot 2, a distance of 97.45'; to the west line of said easement. Generally located east of Dougherty and north of Central.

The applicant is requesting to vacate a dead-end utility easement and convert the existing public sewer line to a private line.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
4. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time March 21, 2000, which was at least 20 days prior to this public hearing.
 5. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
 6. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of a utility easement described in the petition should be approved.

The Subdivision Committee recommends approval.

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- 7/3. VAC 2000-00004** - RK Properties, LLC, c/o Ray Koenig, request to vacate street right-of-way, described as:

The north 10 feet of Lot 1, Block A, American Addition to Wichita, Sedgwick County, Kansas, generally located west of Oliver (Dellrose Avenue) on the south side of Douglas.

The applicant is requesting to vacate street right-of-way along Douglas Avenue to allow for required parking in the vacated area. The applicant is currently using this area for parking. The applicant will dedicate contingent street right-of-way for the area vacated.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time March 21, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of street right-of-way described in the petition should be approved, subject to the following condition:
 1. The applicant shall dedicate contingent street right-of-way for the vacated right-of-way.

The Subdivision Committee recommends approval, subject to:

1. The applicant shall dedicate contingent street right-of-way for the vacated right-of-way.

ZONING:

8. **Case No. ZON2000-00006** - Brant Investment c/o Larry Hackney (Owner/Applicant) request zone change from "MF-29" Multi-Family Residential to "OW" Office Warehouse on property described as:

Lots 13,15,17 & 19, on Dayton Avenue, Lawrence's 7th Addition to Wichita, Sedgwick County, Kansas. Generally located south of Kellogg and west of Seneca (1117 & 1121 W. Dayton).

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "MF-29" Multi-Family Residential to "OW" Office Warehouse on a 0.32 acre platted tract located south of Kellogg and west of Seneca (1117 & 1121 W. Dayton). The applicant proposes to convert the single-family residence at 1117 W. Dayton into an office and to construct a 2,000 to 3,000 square foot warehouse in the rear yard of both addresses for use by an electrical contracting business owned by the applicant. Access to the site would be from a paved alley running north from Dayton and parallel to Seneca. The applicant has indicated that he has an informal agreement with the adjoining commercial property to the east for access across their property to Seneca.

The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub).

Off-street parking requirements in the Unified Zoning Code are 1 space per 250 square feet of office area and 1 space per 1,000 square feet of warehouse area. The applicant has indicated that he has an informal agreement with the adjoining commercial property to the east for off-site parking. Without a variance, the Unified Zoning Code permits no more than 50% of the required parking to be located off-site.

Screening requirements in the Unified Zoning Code are decorative fencing, evergreen vegetation, or landscaped earth berms where adjacent to or across the street from residential zoning districts. In addition to screening, the Landscape Ordinance requires buffer tree planting along rear and side boundaries where adjacent to residential zoning districts.

CASE HISTORY: The site is in Lawrence's 7th Addition, which was platted April 25, 1887.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29"	Single-Family; Multi-Family
SOUTH: "MF-29"	Single-Family; Multi-Family
EAST: "LC"	Tavern/Drinking Establishment
WEST: "MF-29"	Single-Family; Multi-Family

PUBLIC SERVICES: The site has frontage to Dayton, a two-lane paved local street that accesses Seneca (a four-lane arterial) ½ block to the east. Current traffic volumes on Seneca are approximately 19,000 vehicles per day. The 2030 Transportation Plan estimates the volumes will increase to approximately 25,000 vehicles per day. The site is currently served with municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be subject replatting and the following conditions of a Protective Overlay:

1. The zone change to "OW" Office Warehouse shall apply only to that portion of the application area to be used for commercial purposes. Any portion of the application area to be used for residential purposes shall be excluded from

the "OW" Office Warehouse zoning lot. The applicant shall submit a revised legal description of the "OW" Office Warehouse zoning lot that excludes that portion of the application area to be used for residential purposes.

2. Only the following uses shall be permitted on the zoning lot: construction sales and service; office, general; and warehousing.
3. The warehouse building shall be setback at least 20 feet from the east property line to provide a loading and parking area.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub).
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-29" Multi-Family Residential and is currently developed with viable residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Introducing commercial uses into a neighborhood that is used for residential purposes has the potential to cause a decline in the desirability of neighboring properties for residential use and could result in declining residential property values from nuisances such as lighting, noise, odor, etc. from the commercial uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.

KNEBEL "The applicant proposes to convert the single-family house which is located on the east of the site to an office and to construct a 2,000 to 3,000 square foot warehouse building behind the two single-family residences. The purpose of the warehouse and office would be to support an electrical contracting business owned by the applicant. The access to the site would be from Dayton to a paved alley which runs between this single-family here (indicating) and the commercial zoning that is located along Seneca. The applicant has indicated that he has an informal agreement with that commercial business for access across that site in instances where the alley would not provide sufficient access. There is an existing commercial business located east of the proposed warehouse building. The lot immediately south of the property is vacant and there are residences kind of southwest and to the west.

The Comprehensive Plan indicates that the area proposed for rezoning basically should conform to the zoning that is in the area now, which is high-density residential. The commercial locational guidelines indicate that commercial sites should be located adjacent to arterials and should have site design features which limit the adverse impacts on surrounding residential properties. The proposal before you today doesn't comply with either of those, the guidelines nor the Land Use Guide. Based on that, the Planning staff is recommending denial of the application, however, in the event that the Planning Commission feels that it is prudent to approve this application, we have recommended some conditions upon which the approval should be subject.

One of those is the condition of replatting in order to get a lot here that reflects what is intended on the site. Basically it is intended that the north half of the western two lots would continue to be a residence and would remain 'MF-29'. The remainder of the property would become Office Warehouse and would have an office on the north fronting Dayton and then a warehouse in the rear. Basically you would plat the property so that you would have two lots, one for the residence and one for the office and warehouse.

The uses also are recommended to be restricted to construction sales and service, office and warehousing and then also the warehouse would be set back 20 feet from the east property line to provide a loading area and a parking area that would provide sufficient access using the alley as the access point. I am available for questions."

BARFIELD "What is the square in red on the slide?"

KNEBEL "It is the Old English Pub. It is a tavern."

BARFIELD "So this would be back to the west of that?"

KNEBEL "Yes, it would be immediately west of that across a paved alley."

GAROFALO "Are there any other questions of Scott?"

LOPEZ "Would there be screening between Office Warehouse and residential?"

KNEBEL "Right. I didn't mention that, but it is located in the 'background' section of the staff report that screening consisting of decorative fencing, evergreen vegetation or landscape berms would be required and then you would also be required to provide fencing where you are immediately adjacent."

LOPEZ "It wouldn't be masonry?"

KNEBEL "Well, no, that is not required, but it would be required to be solid, yes."

LOPEZ "Solid, but in this case, solid doesn't mean masonry."

KNEBEL "Right. We have not recommended that, but it could be a requirement, yes."

GAROFALO "Are there any other questions of Scott?"

MCKAY "Couldn't this be taken care of with a Conditional Use permit?"

KROUT "Are you asking if you could do an Office Warehouse by Conditional Use in a residential district? No."

MCKAY "You can't do a Conditional Use. Okay."

OSBORNE-HOWES "But you recommend denial?"

KNEBEL "That is correct."

KROUT "Did you mention the District Advisory Board meeting?"

KNEBEL "I did not. I overlooked that. The District Advisory Board did hear this case and they had a consensus of approval and then the Conditions that they would like to see are basically the same as what are listed here if the Planning Commission decides to approve the case."

KROUT "Are you aware of this letter that just got circulated from the applicant?"

KNEBEL "Yes, I do have a copy of that."

GAROFALO "Are there any other questions? Okay, then, we will hear from the applicant or agent."

LARRY HACKNEY "I am the owner of the two properties and the owner of Hackney Electric Company, the business is wanting to build the warehouse in the back. I tried to cover all of the pertinent areas in the letter to expedite things. The fact that they have recommended denial, as I understand it, is just a formality since they have tentatively agreed that if I adhere to the conditions on the recommendation from the other committee, and they unanimously voted to approve. So, if you have any questions, I would welcome them."

GAROFALO "But you understand that the staff is recommending denial."

HACKNEY "Yes, I do. I understand that he is saying that he recommended denial but anyway, yes, that is what it says here quite plainly. Yes. But as far as I understand, that recommends denial unless these circumstances are adhered to underneath."

GAROFALO "No, that isn't correct. Staff is saying that they recommend denial and then they are saying however if the Planning Commission sees otherwise then they are recommending these conditions."

HACKNEY "Yes, sir. That verbiage just came up last week."

GAROFALO "I just want to make sure you understand that staff is recommending denial."

HACKNEY "I understand. That came up at the tail end of this that he was recommending denial; however appearing that it was a good idea."

BARFIELD "I notice that you said you had talked with some of your neighbors. Do you live in that area?"

HACKNEY "Yes, sir. I live right here (indicating). And the property to the immediate west is this right here, and that is the one that I am talking about putting a cedar fence down the entire length of. The people across the street are some apartment complexes. I know the guy that owns them. Those are really the only neighbors that are anywhere near."

GAROFALO "Okay. But have you talked with other neighbors in the area?"

HACKNEY "I have not gone beyond the English Pub people and the people across the street and the people adjacent to the west, two houses next."

GAROFALO "Have you had signs up?"

HACKNEY "Yes, sir. They are up right now."

GAROFALO "All right. Are there any other questions of the applicant at this point? Okay, thank you."

HACKNEY "Thank you, sir."

GAROFALO "Is there anyone else to speak besides the applicant, in favor of this application? Is there anyone here to speak in opposition? Okay, we will take it back to the Commission."

WARREN "Marvin, is there a lesser zoning that could be put in place here with a Conditional Use, other than just 'LC'?"

KROUT "Well, actually, we designed this Office Warehouse district with the idea in mind that it might be appropriate in locations like this because it is more limited in that it doesn't allow a lot of commercial uses that area allowed in General Commercial or some of the retail and some of the uses that are allowed in Limited Commercial. So we thought there might be circumstances where there might be a use for a buffer for a small scale Office Warehouse type use."

WARREN "So what you are recommending is Office Warehouse, if in the event it is approved?"

KROUT "If it is approved, that is a better category than any of the others. All of the other categories are more intensive."

WARREN "And the Office Warehouse then, would also require a Conditional Use?"

KNEBEL "No. I spoke with the Zoning Administrator regarding this, Kurt Schroeder, and the Office Warehouse is the required zoning for the intended use. You couldn't do it in Limited Commercial or other zoning because it is not primarily a retail operation."

KROUT "General Commercial would be possible, but General Commercial is more intense and has a lot more uses and this is a less intensive category."

KNEBEL "Right."

MARNELL "The proposed warehouse building that is going to be put on this site, what is the orientation of that?"

KNEBEL "You will have to ask the applicant on that."

HACKNEY "There is nothing definite at this point, but (indicating) see this little garage right here? That will be torn down and then the building will actually have, where the opening is going into this driveway for the Old English Pub, have a large door here that I can back into and unload, for instances, light fixtures or something. The building will come back this way over to this garage and then back. Something to this effect."

MARNELL "So from the south, what you would really see is the back exterior, primarily a metal building?"

HACKNEY "There would be a built-in door. Then there will be one small door there that will hardly ever be used because that alley is not much good for anything. The majority of what you would actually call the visibility would be from the alley towards the Old English Pub."

HENTZEN "How many square feet are you going to have in your building?"

HACKNEY "Somewhere between 2,000 and 3,000 square feet."

OSBORNE-HOWES "Is there space enough to have nine parking spaces on the east side of that?"

HACKNEY "Yes, ma'am."

OSBORNE-HOWES "And you pull in from the alley? Is that an alley there?"

HACKNEY "Yes, ma'am. It is a heavily trafficked alley right now. With the 20 foot setback, we are already parking cars diagonally there with less setback than that actually."

BARFIELD "Sir, if this were to be approved, would you agree to the conditions that staff has laid out?"

HACKNEY "Yes, sir. I would adhere to those 100 per cent."

KROUT "Are you keeping both residential buildings to be along Dayton?"

HACKNEY "Okay, this building right now is an office (indicating). It is my office. It was zoned Multi-Family when I moved in there. I was living in that building up until about a month ago, which made it permissible. So, my appearance here has been on the location for four or five years now. But I already am living, I just got my son about a month ago to live with me, so we moved into this house which we intend to leave Multi-Family so that I can stay there."

KROUT "Will you have more than one unit in there? Just one dwelling unit?"

HACKNEY "Yes, sir. One dwelling unit and that is this one here, which is adjacent to the other home (indicating)."

HENTZEN "How about the other one on your property?"

HACKNEY "This one here, this is an office. This is the Hackney Electric Company office."

GAROFALO "Are you going to keep that?"

HACKNEY "Yes, sir. It will continue to be my office."

KROUT "And the parking will be sufficient for the office and the warehouse, Scott?"

KNEBEL "I have not seen any plan to indicate that it would or wouldn't be. I don't know."

HACKNEY "I based my calculation on the information on the staff report saying 500 square feet to one vehicle. This is about 1400 square feet, and add 3,000 and that divided by 500 would give 9 spaces."

KROUT "And where will you park for the residence?"

HACKNEY "I have a driveway right here and a garage right here that will remain with the residence."

GAROFALO "Sir, how many employees do you have?"

HACKNEY "Currently I only have about 20. It fluctuates. But most of my employees do not come in to the office ever. They are too expensive for me to have them showing up there. They show up on the job site. So I have routinely appearing at the office four people."

GAROFALO "So you wouldn't have 20 cars parked around there."

HACKNEY "Oh, my goodness, no. And the people over here, and I do realize that you can't stand on this much, but they allow me to park right in this area here (indicating). I do them a few favors, too. I think it would really dress the area up, myself."

GAROFALO "Are there any other questions of the applicant? Scott, I want to ask to clarify for myself, and maybe others, we are talking about just rezoning the southern parts of the two lots?"

KNEBEL "It would be the southern portion of the western two lots and then all of the eastern two lots."

GAROFALO "Oh, okay, because he has his office there."

KNEBEL "Right."

JOHNSON "Marvin, basically, the parking requirements, if he can't meet the requirements through Central Inspection, he couldn't get a permit to build this anyway, right?"

KROUT "Right."

JOHNSON "I know the parking is a concern, but it is not something we can base rezoning on."

KROUT "Right. We just don't want to lead him along the Primrose Path, and then he would have a big problem later on."

JOHNSON "Exactly. In this particular situation, I see why it was recommended to be denied by staff, but I do like the solution of where there is already an existing office, there is going to be a residential style and his residence next to it and no opposition from any neighbors or anything, I guess I would move to approve."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub). The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-29" Multi-Family Residential and is currently developed with viable residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Introducing commercial uses into a neighborhood that is used for residential purposes has the potential to cause a decline in the desirability of neighboring properties for residential use and could result in declining residential property values from nuisances such as lighting, noise, odor, etc. from the commercial uses. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential

areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to replatting and the following conditions of a Protective Overlay:

1. The zone change to "OW" Office Warehouse shall apply only to that portion of the application area to be used for commercial purposes. Any portion of the application area to be used for residential purposes shall be excluded from the "OW" Office Warehouse zoning lot. The applicant shall submit a revised legal description of the "OW" Office Warehouse zoning lot that excludes that portion of the application area to be used for residential purposes.
2. Only the following uses shall be permitted on the zoning lot: construction sales and service; office, general; and warehousing.
3. The warehouse building shall be setback at least 20 feet from the east property line to provide a loading and parking area.

JOHNSON moved, **MARNELL** seconded the motion.

MICHAELIS "I guess my question would be does it make sense for us to divide those lots up into little bitty zones? If we are going to do this, which the fact that the residence is going to stay and the other building that is already there is going to stay, so physically we are not really doing anything to take away from the existing look, and I would be all in favor of supporting it, but I would also be in favor of just rezoning that whole area. I mean I can't see taking 60 foot of a lot, and..."

KNEBEL "Residential use is not permitted in the Office Warehouse district."

KROUT "The residence is non-conforming in Office Warehouse zoning."

LOPEZ "The alley that is running east and west hooks back around and heads north? Is that what I am seeing there?"

KNEBEL "Yes."

LOPEZ "Access to the warehouse would be at that alley?"

KNEBEL "The north/south alley. The north/south alley is actually the only one that is paved. The alley that runs east/west is not paved."

MCKAY "Are we going to require the gentleman, if it is approved, to replat?"

KNEBEL "It is one of the recommended conditions. It says 'subject to replatting and the following conditions of a Protective Overlay'."

WARREN "Mr. Chair, I would like to follow up on a couple of comments. Would that residential use, couldn't it remain as a non-conforming use if we went ahead and zoned that whole thing?"

KROUT "Yes, it could. I will just tell you that we have had recent calls from people both in Wichita and Hutchinson where lenders seem to be really looking at zoning more carefully and are not issuing loans for maintaining or improving properties that are not conforming to the zoning."

WARREN "I understand that, but it looks like we are almost creating a non-conforming use by virtue of our zoning. I don't think that lot is big enough to be in conformance, is it? For residential?"

KROUT "Well, the residential lot would end up being a little over 3,000 square feet. That would be a lot in the 'MF' district. I think that the size for a single-family lot is 3,000 square feet in Multi-Family."

GAROFALO "And if he is going to maintain his residence there, I don't see any reason to be zoning it all."

KNEBEL "It is 3,500 square feet. That is the minimum size for single-family, 50 x 70."

PLATT "I wasn't going to say anything, but I think we need to get it into the record that in essence what is being proposed here is putting a construction warehouse right into a residential neighborhood, which seems to me in complete violation of what we do to try to preserve neighborhoods. I just can't believe that we would even consider doing it. This is a residential area, this isn't a construction area."

OSBORNE-HOWES "I do have a question. Are we treating this as an expansion of a business and we are looking at this favorably, because this is not an expansion of what is currently there now, right? What is there now is just his office and now we are looking at a warehouse. So, I don't think any of us can sit here and look at the expansion of a business is a way to say that this is okay, which has me bothered."

GAROFALO "I might mention that I have the same concerns about making these changes in a residential area, even though the DAB went along with it, apparently and there has been no opposition, but I don't see that that is necessarily the thing that would sway me one way or the other."

MICHAELIS "I would just like to ask Marvin, based on everything that has come about here with the residence and everything, would that change your opinion at all, or do you still say deny?"

KROUT "This is a very run-down neighborhood and there is probably not a lot of owner occupancy there, but it is in an area that the City intends to improve. As I said, we designed this Office Warehouse district so that it might fit into areas like this. This is not one of those cases that has an easy answer for us, I think. I am a little concerned about how we seem to 'shoehorning' these uses in and everything is a little bit too close together. I do think there is a future for the residential neighborhood, so I am not changing the recommendation."

GAROFALO "Are there any other questions or discussion? Okay. We will have a roll call vote on this one, I guess."

MCKAY "What is the motion?"

GAROFALO "The motion is to approve, subject to the conditions staff laid out."

VOTE ON THE MOTION: The motion resulted in a moot vote with 6 votes in favor (Marnell, Johnson, Warren, Warner, Barfield and Hentzen) and 6 in opposition (Michaelis, Platt, Lopez, Garofalo, Osborne-Howes and McKay). Wheeler and Carraher were not present.

KROUT "Unless there is another motion, this will go to the City Council as a failure to recommend approval. What that means is that the City Council, on their first consideration would have to approve this by a 2/3 vote, that is 5 out of 7 votes. If they don't do that, then it would either be denied or they would send it back to Planning Commission. If they send it back, then no matter how the Planning Commission recommends the second time, they could override the Planning Commission by a simple majority."

MCKAY "I have a question of staff. Is there a possibility that the area where his house is or those first two lots where his office is could be classified as just Office and leave out Warehouse so he could still have his office space there? The only thing I am opposed to is going back to the back and building another building of 3,000 square feet. Maybe there is room for parking, maybe there is not. That is a very, very busy corner on Seneca with the exit coming off of Highway 54 and everything. I am suggesting that where his office is now, on the east lots, I think..."

KNEBEL "It is on the east two lots, yes."

MCKAY "Zoning that as whatever the first classification is that he could leave his office in. Neighborhood Office, would that work?"

KROUT "Yes."

MCKAY "So that he could leave his office there but he wouldn't be able to build his building and stuff to that effect. I have a problem with his going in and building that building. I am very, very familiar with this neighborhood. There is no direct access to the warehouse. You either have to come up the alley or go through somebody else's property to get to this warehouse. So it is not the office I am opposed to, it is the warehouse on the backside."

OSBORNE-HOWES "Me, too."

KROUT "Yes, they can do that."

MOTION: That the two easterly-most lots be zoned Neighborhood Office.

MCKAY moved, **MICHAELIS** seconded the motion.

MARNELL "Aren't we imposing zoning on somebody who hasn't requested it? This doesn't seem right."

MCKAY "Well, then, lets ask the gentleman if that is what he would like."

KROUT "The Planning Commission and the City Council can always grant something less but not more than what was requested. This is less. It is fair enough to ask the applicant if he would like this idea or not."

GAROFALO "Mr. Hackney, would you come up to the podium? Did you understand what just took place?"

HACKNEY "I am not sure that I thoroughly understand. It sounds to me like somebody made mention that the property was inaccessible. Of course, I disagree with that totally. Then I understand that maybe you are talking about setting it up so that I can use my office as an office in the future, but not to be able to put a building on the back. No garage, no warehouse. There is a garage on it right now that needs to be torn down."

GAROFALO "I think you understood correctly."

HACKNEY "Uh huh. I don't think I would like that very well. That would greatly reduce the value of my property and my business and my ability to be competitive."

MCKAY "Do you understand the circumstances?"

HACKNEY "I understand that it would be out of generosity that you allow me to stay in the office that I have been using, but I don't see any advantage other than in very, very short term. We can turn this property back into something similar to what it has been in the past very easily. I would lose money, but that would be about the extent of it."

KROUT "John, your motion was just to approve Office Zoning, but not any Office Warehouse zoning?"

MCKAY "Just Neighborhood Office. That is the one with which he could continue to use his office."

WARREN "Mr. Chair, we should throw this thing up and take another look at it. I will tell you this, I voted for this motion to approve what was proposed here because as a practical matter, when you look at what that commercial is on the corner and then try to hypothetically think who is going to improve those residences to the west of that commercial. I don't think there is going to be any investment made in there and I think we are going to see further deterioration. Now, either we can opt to say 'let's just make it commercial and build something real delightful on it', or do what we did or say 'let's condemn this to further deterioration'. That is what we are doing. As a practical matter, we are condemning those properties to further deterioration."

OSBORNE-HOWES "I hate to go back and discuss something we have already voted on, though. I think we tried for another motion and he didn't accept it, so I don't know if you want to take the motion back and we just move on to the next case or what."

MCKAY "There was a motion made, and there was even a second."

OSBORNE-HOWES "Or we could vote on it anyway, but the applicant has said that he wouldn't accept it."

MCKAY "We have the right to vote the zoning down, not up."

OSBORNE-HOWES "That's right. I just hate to talk back over something that we have talked about."

WARNER "Is what we have done to this point in time make it a requirement for him to not use the facility he is in as his office?"

KROUT "Right. Unless you grant Neighborhood Office zoning, which is the current motion, then that office would continue to be illegal and eventually Central Inspection would take action."

WARNER "And as a 6 to 6 tie, it is going to the City Council without a recommendation?"

KROUT "Just as a denial, right."

WARNER "It would be going as a denial?"

KROUT "Right. And if the City Council sustains the denial, that means that it will stay multi-family and the office will still be illegal."

WARNER "So the man is going to have to move."

GAROFALO "Mr. Hackney, do you understand that?"

HACKNEY "Yes, I do."

GAROFALO "And you still would not like to see the Neighborhood Office zoning?"

HACKNEY "Without seeking further counsel, I would have to say no. I will lose \$75,000 and the area will lose their best customer. I think I have improved it more over the last 5 years than anybody has, and I intend to continue to."

WARREN "Marvin, what would it take to bring this back to this Commission prior to going to the City Commission? What kind of action could potentially bring it back for another consideration prior to going to the City Council?"

KROUT "Why would you want to bring it back for action? You could have a substitute motion to defer if you wanted another vote on this. Is that what you are looking for?"

WARREN "I would like to defer it. I think we have hurt the fella and I think I would like to see us take another look at this before the action goes into effect."

SUBSTITUTE MOTION: That the motion made be set aside in lieu of one for a deferral.

WARREN moved.

KROUT "Are you asking for a two week deferral?"

WARREN "Yes, that would be fine."

KROUT "Is there a second to this motion?"

JOHNSON seconded the motion.

JOHNSON "The reason I am seconding the motion is that I don't know that he totally understands what we are talking about, and we could keep discussing this here, but I guess I would like for staff to get with him and explain it."

BARFIELD "I would suggest we let this go on and see what the City Council does. It doesn't mean that this is a final act just because we vote here. The City Council could see it totally different than we do."

KROUT "They could send it back to you. They could also, even if this motion fails, also approve Neighborhood Office. That is still an option that they will have, although they will have to have 5 votes to do that."

WARREN "How long would it be before he could reapply?"

KROUT "Normally one year from the time of a hearing, unless there is some change in circumstance, and then you can waive it to 6 months."

MARNELL "I am going to support Mr. Warren's motion because I probably should have been more vocal in the beginning. If you look at the slides, looking at that neighborhood, and I agree with the comments made that there is nothing going to clean that area up similar to this project. I think to try to stand on that this is a neighborhood, I think we need to take a look at this, and just because the zoning is neighborhood, it doesn't make it a neighborhood. It may have been intended by planners long ago to be, but that is not what it is and that is not what the property adjacent to it is, or how the property has apparently been used for some period of time, and for the folks who do live in the single-family residences further away, this is probably their best chance for seeing something happen to that property that is positive."

WARNER "I have a question for Marvin. If you recommend this to go to the City Council, obviously what you say there carries some weight. How are you going to present this to the Council?"

KROUT "If the motion for Neighborhood Office is approved, I would tell the City Council that the staff goes along with that recommendation."

WARNER "No, I am not talking about that. I am talking about the motion that we voted on."

KROUT "The motion to approve?"

WARNER "The motion to approve that the vote was 6-6 on."

KROUT "Well, the staff recommendation was to deny Office Warehouse zoning. As I said, we will stand by that. If there is a motion for Neighborhood Office zoning and that is approved, then we will tell the City Council that we think that is a good category and we will go along with that."

LOPEZ "I have a question on procedure. I believe there was a motion for Neighborhood Office and a second, then there was another motion made to defer, but the maker of the first motion, don't they have to accept that?"

GAROFALO "I am not sure, myself now."

WARREN "I asked that the first motion be set aside."

KROUT "We have a substitute motion and a second. We will vote on the substitute motion. I think that is what we have now."

LOPEZ "He said 'set aside' that motion."

GAROFALO "We may have to have a motion to set aside first."

WARREN "The motion was to set the verdict that we just had aside and in lieu of that that we defer the proposal for two weeks."

LOPEZ "That motion was already adopted. You can't set it aside."

GAROFALO "No, no, he is talking about McKay's motion."

MCKAY "There can be a substitute motion regardless of whether it be about the motion I made or the one he made."

GAROFALO "Right. That would be a substitute motion. But hold on a minute."

OSBORNE-HOWES "I just have a comment. We made a motion, way back when and the vote was 6-6. So we looked at another one. And now what I hear happening is those people who voted in favor of the motion are saying we don't like the vote so we want to defer this. But I don't hear any other reason for deferral except that maybe that would get some of us to rethink it or to let the applicant understand a little better what we are voting on, which he could do if you would sit down with him before the City Council. So I guess I am really struggling with why we are doing this. You know, this could set a precedent, I suppose, for any of our votes to do this and we could go on until 10 or 11 o'clock until everyone here is satisfied."

MCKAY "Mr. Chair, it is very simple. I made a motion and it was seconded. If he wants to make a substitute motion and it is seconded, and we vote on the substitute motion and we could sit here and talk all day long, but if the substitute motion carries, then the first motion is dead. So let's vote on the second motion, the substitute motion."

GAROFALO "Is there any further discussion of the substitute motion?"

PLATT "It wasn't offered as a substitute motion. The word 'substitute motion' was never used by the maker of that motion."

KROUT "Well, I think that was his intent. That is the way I interpreted it."

GAROFALO "That's the way I took it too, that it was a substitute motion."

WARREN "I didn't know if John ever got a second on his motion."

GAROFALO "Yes, he did."

WARREN "Okay. Then mine would be a substitute motion to his then. I don't have any problem with that."

GAROFALO "Okay, but I think on the substitute motion, you said something you said something about setting his motion aside?"

WARREN "No, not his motion, the action we took, the split vote, to set that aside."

GAROFALO "Oh, you can't do that."

WARREN "I thought we could."

KROUT "What is on the table is a substitute motion for McKay's motion. The substitute motion is to defer this case for two weeks."

MCKAY "Right. Let's vote that up or down."

HENTZEN "Mr. Chair, I sympathize with what you are saying about the condition of that neighborhood. I am going to vote for Ray's motion to defer. I recommend all of you that voted 'no' to go over there and look at that and then come back and tell me that it is prime neighborhood that we need to protect. I just want you to know what you are talking about."

BARFIELD "I voted yes. I voted yes because I don't think that this project would be a detriment to this neighborhood. However, we have had a vote. It was 6-6. The normal procedure for this matter should be to proceed to the City Council. I don't know how we can undo what we have done."

KROUT "Because the first vote was a failure to recommend approval, it is not out of line to take another motion."

WARREN "You've got to get a consensus, one way or the other."

LOPEZ "We have a consensus."

MCKAY "We are voting on deferring this for two weeks, right?"

GAROFALO "Right."

VOTE ON THE SUBSTITUTE MOTION: The motion carried with 7 votes in favor (Michaelis, Marnell, Johnson, Warren, Warner, Hentzen and McKay) and 5 in opposition (Platt, Lopez, Garofalo, Barfield and Osborne-Howes). Carraher and Wheeler were not present.

9. **Case No. CON2000-0005** - Charles and Mary Starks (Owner/Applicant); Divine Towers International and Ferris Consulting c/o Greg Ferris (Agents) request Conditional Use to permit a commercial communication tower, described as:

The Northeast Quarter of the Northeast Quarter of Section 25, Township 27 South, Range 2 East of 6th P.M., Sedgwick County, Kansas, except for the East 500 feet thereof, and the field entrance which is approximately 700 feet West of the centerline of 159th Street East, Sedgwick County, Kansas. Located approximately 870 feet south of Kellogg and 579 feet west of 159th Street East.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area: He reviewed the following staff report:

BACKGROUND: The applicant is seeking a Conditional Use to permit the construction of a 150-foot commercial communications monopole for use by AT&T Wireless Services. The monopole will be sited on a 3,600 square foot area located

approximately 700 feet south of Kellogg and 579 feet west of 159th Street East. Access to the site is to be from Kellogg. The applicant's site plan (attached) depicts a 60-foot by 60-foot compound enclosed by a chain link fence. Within the enclosure would be the monopole and an equipment shelter. The monopole would be constructed so as to be able to accommodate up to three carriers. The site is apparently within the floodway fringe of Four-Mile Creek.

The location proposed for the commercial communication tower in this request is the third location proposed by the applicant in this particular quarter-section. The first proposed location was along Lincoln west of 159th Street East. The application for the first proposed location was withdrawn by the applicant due to planning staff's recommendation for denial and neighborhood opposition. The second proposed location was along 159th Street East south of Kellogg. The MAPC approved (12-0) a Conditional Use for the second proposed location on February 24, 2000; however, protest petitions from 38% of the neighboring property owners were received causing the applicant to develop a third proposed location. One of the four protestors and three additional property owners in the notification area have submitted a "Waiver of Notice and Consent to Relocation of Cell Tower Approved February 24, 2000 by the MAPC" (attached) in support of the third proposed location.

Most of the property surrounding the site is undeveloped. The nearest developed properties are commercial properties south of Kellogg on the east side of 159th Street East in Butler County. Undeveloped property platted for single family residential use is also located on the east side of 159th Street East in Butler County. The nearest property developed with residential uses is one single-family residence located approximately 1,500 feet to the southwest on the east side of 159th Street East in Butler County. On the west side of 159th Street East in Sedgwick County, property to the north, south, and west of the site is zoned "SF-20" Single Family Residential and is used for agriculture.

The applicant indicates that this site is necessary for AT&T Wireless Services to provide continuous coverage east of the city along Kellogg and I-35. The closest existing towers are between 1.9 and 2.5 miles east of the site, and AT&T Wireless Services is co-locating on one those towers. Since this is a largely undeveloped area, there are not any buildings of sufficient height which might provide alternative support structures on which to locate antennas. The applicant states that the 150-foot height is needed to achieve coverage targets.

There currently is a commercial communication tower study ongoing by the city and county. The study is focusing on possible alternatives to the construction of new tower structures. Due to the undeveloped nature of the property in the vicinity of this site, none of the study's alternatives to new towers is likely to be applicable in this case. The study also proposes design guidelines for new commercial communication towers, and staff's recommended conditions of approval regarding landscaping, glare reduction, and lighting are intended to bring the proposed new tower into general compliance with the proposed design guidelines.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" Agriculture

SOUTH: "SF-20" Agriculture

EAST: Butler Co. Outdoor vehicle and equipment sales; warehousing; undeveloped single family residential

WEST: "SF-20" Agriculture

PUBLIC SERVICES: No municipally supplied public services are required. The site has access to Kellogg, a four-lane expressway with 1997 traffic volumes of approximately 24,000 vehicles per day. The proposed 2030 Transportation Plan estimates that traffic volumes on Kellogg will increase to 34,000 vehicles per day. The "field entrance" proposed for accessing the site likely will be a temporary access solution, and as additional development occurs in the quarter-section, future access to the site likely will be restricted along Kellogg through the Kellogg Access Management Corridor Master Plan.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication towers.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. The applicant shall receive the necessary approvals from the County Engineer for construction in or removal of the site from the floodway fringe.
- D. A landscape plan shall be submitted for approval by the Director of Planning which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the site.

- E. Access to the site from Kellogg shall be temporary access, and alternative access to the site reasonably acceptable to the Director of Planning shall be provided by the applicant at such time that the City, County, or State determine that full access control along Kellogg is warranted.
- F. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- G. There shall be no lighting of or on the monopole.
- H. The monopole shall not exceed 150 feet in height.
- I. Any violation of the conditions of approval shall render the conditional use permit null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Most of the land adjacent to the site is currently used for agriculture and is zoned "SF-20" Single Family Residential. The nearest developed properties are commercial properties along Kellogg east of 159th Street East in Butler County. The character of the land is agricultural, with urban development approaching from the north, east, and west.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located along Kellogg on the east side of 159th Street East in Butler County. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the property with commercial uses, which is indicated by the Comprehensive Plan as being the appropriate future development for the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost.
- 5. Impact of the proposed development on community facilities: The "field entrance" proposed for accessing the site likely will be a temporary access solution, and as additional development occurs in the quarter-section, future access to the site likely will be restricted along Kellogg through the Kellogg Access Management Corridor Master Plan.

KNEBEL "This is a 60 x 60 foot compound that would be enclosed by chain link and would have a 150-foot monopole in it. The location that is proposed in this quarter section is the third such location that has been proposed by the applicant. There is a history of what has happened and I will go into that if anybody is interested, but it is in the staff report.

The area surrounding this site is primarily undeveloped. The only developed properties are to the east along Kellogg in Butler County. The applicant indicates that a communication tower is needed in this area in order to provide PCS phone service for AT&T Wireless services. The closest towers are over two miles away and the applicant is using one of those two towers for their network. The land use guide in its current form recommends that this area is appropriate for low-density residential, but the amendment that the Planning Commission approved recently identifies this area as commercial development. Staff is recommending approval, subject to the conditions in the staff report. I am available for questions."

MCKAY "This is the only location on this piece of ground where we are going to have one of these, right?"

GAROFALO "I wouldn't bet on that. Okay, we will hear from the applicant's agent now."

GREG FERRIS "I represent AT&T Wireless Services. Thank you for hearing this case today. You may recall when we were here before, we had a location that was to the north and the east of this. There was, at that time, one property owner that had some opposition. We agreed, at that time, that we would try and work out something with that property owner. We thought we could do it without coming back. The County Attorney recommended, Marvin recommended and my client preferred to go ahead and go through the formal process of getting this site approved, in which case we will drop the approval for the other site.

AT&T's position has been, from the day they started this process that they wanted to work with neighbors, they wanted to work with surrounding property owners and they spent several thousand dollars on this particular site to go through with that commitment. There is one correction to your staff report, and I don't know if you have provided that Scott, but all of the property owners that are in the notification area have signed waivers that say that they are not opposed to this, and in fact have waived any right of appeal, etc. to this site. So you can be confident that this is indeed the last site. AT&T is not waiting any longer.

This is a good site, it is frankly probably the best of the three sites and it took a little convincing of the actual property owner for him to recognize that this was not only in the neighbor's interests, but their interests. We just have a couple of comments about the conditions.

Condition D is a landscape plan with dense evergreens. If you recall the slides, and if you need to see them, I am sure Scott can run through them again. It is a considerably wooded area as it is. We would prefer that that condition be that we replace any trees that might be removed. This area will probably be commercial and maybe even parking. Frankly we don't want to plant a lot of dense evergreens that may have to be removed in the future when this property is developed. We think that may be a little bit of a waste. In the event that it does develop in the future, the landowner will require whatever screening will be necessary from his property from our property. So we don't think that is a necessary restriction. We don't mind a restriction that requires us to replant any trees that we have.

The other condition is Condition E, which talks about the access road. This is a driveway that is to a former residence. That driveway is actually controlled by the property owner, and not my client, so to put this condition in here, I am not sure how my client could actually fulfill that condition because when the highway comes through there, they will be negotiating, not with my client, but with the landowner himself. You may have opportunity in the very near future, as he is looking at rezoning that to put access controls or restrictions on the large piece of property, but we don't think it will have an impact and would rather not try to muddy the water with that access road with the language that is in here.

If you want to put language in here that says that when this property is developed, that there may be an alternate driveway or access, we don't have any problem with that. We are going to access it, frankly, however the property owner tells us to because that is the way the requirement is with our landowner that we will access that from whatever access he has. So, with the exception of those two conditions, we concur with staff and thank you for your support on this one. We would be glad to answer any questions."

BARFIELD "It was Item D and what was the other one?"

FERRIS "Item D and Item E."

OSBORNE-HOWES "Did you go along with items D & E the first time?"

FERRIS "It wasn't in the first time. Well, the second time, Item D was, but that was a location that was very near 159th Street. If you will see how far back this is and it was not that type of hedgerow. Item E was not in there on the last one."

OSBORNE-HOWES "Because of the site being different?"

FERRIS "Right. It had a different access road."

KROUT "Would it be all right if we revised Item E to say 'access to the site from Kellogg for this communication tower. It shall be temporary access'? And then when you are not dealing with whatever access rights they have for the residents?"

FERRIS "I don't have any problem, Mr. Krout, if you want to word this that this access would be temporary contingent upon the development of this property. We need to have access and if they impact that access with the property owner, that is an access easement now; it's a driveway from a residence. It has been there for 30 or 40 years. So if KDOT wants to come through there and build Kellogg, they are going to have to negotiate that access control anyway. However they do that. Like they did on K-42 and other areas.

So, I don't have any problem if you want to put something in here, and I didn't really work on wording that the access to this site will be temporary until such time as access is determined in the future. We don't want to get caught in a position where there is no access, and if the property owner then, ends up negotiating some type of an access control, he is responsible to provide us access and so I am not sure that the Planning Commission wants to get in the middle of that, so it may get complicated down the road if it got to that point. This isn't heartburn, I am just looking down the road at the future and what might take place and I don't want my client to end up with inadequate access because he can't access from 159th Street because that is floodway and floodplain. So the access must come from the north in some way or another. It may be at this point, it may be at another, but as this developed commercial, there may not be an access point there, it maybe a separate one that comes around.

If you want to word it so that there will be always be access and that access may come from the future commercial property, I don't have any problem with that. So however you want to word that is not an issue to me as long as you are not granting me 'temporary' access to this site."

KROUT "Our concern is, I guess, is direct access. If we said 'direct access to the site'?"

FERRIS "From Kellogg? I don't have any problem with that."

KROUT "Will that take care of it?"

FERRIS "Absolutely. I don't have to have direct access to this site from Kellogg. That is fine."

KROUT "Okay. That was our only concern."

GAROFALO "Does that take care of it?"

LOPEZ "Yeah, because right now there is no access."

KROUT "And no problem with waiving the landscape requirements. I think this will end up being a commercial zone."

GAROFALO "Okay. Any other questions? Thank you, Greg. Is there anyone besides the agent to speak in favor of this item? Anyone to speak in opposition? If not, we will take it back to the Commission.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the land adjacent to the site is currently used for agriculture and is zoned "SF-20" Single Family Residential. The nearest developed properties are commercial properties along Kellogg east of 159th Street East in Butler County. The character of the land is agricultural, with urban development approaching from the north, east, and west. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. The site could be developed with single family residences if a commercial communications tower is not constructed. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed properties are located along Kellogg on the east side of 159th Street East in Butler County. No evidence has been presented to date that the construction of a monopole will detrimentally affect nearby property to a greater degree than will the development of the property with commercial uses, which is indicated by the Comprehensive Plan as being the appropriate future development for the site. The only impact to be noted at the time this report was prepared is the visual impact of a monopole. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. However, the proposed update to the Comprehensive Plan identifies this area as appropriate for "Commercial" development. Given the updated indications of appropriate future development, this site generally conforms to the updated Land Use Guide of the Comprehensive Plan. The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Impact of the proposed development on community facilities: The "field entrance" proposed for accessing the site likely will be a temporary access solution, and as additional development occurs in the quarter-section, future access to the site likely will be restricted along Kellogg through the Kellogg Access Management Corridor Master Plan.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
3. The applicant shall receive the necessary approvals from the County Engineer for construction in or removal of the site from the floodway fringe.
4. Direct access to the site from Kellogg shall be temporary access, and alternative access to the site reasonably acceptable to the Director of Planning shall be provided by the applicant at such time that the City, County, or State determine that full access control along Kellogg is warranted.
5. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
6. There shall be no lighting of or on the monopole.
7. The monopole shall not exceed 150 feet in height.
8. Any violation of the conditions of approval shall render the conditional use permit null and void.

BARFIELD moved, **MICHAELIS** seconded the motion.

GAROFALO "Is there any discussion on this motion? If not, we will vote on it."

The motion carried with 12 votes in favor. There was no opposition.

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10. **Case No. CUP 2000-0007; DP-191 Amendment #11** - Latham Development, LLC (Owner); P.E.C., PA c/o Rob Hartman (agent) request to amend DP-191 Wilson Property to adjust Parcel 8 on property described as:

Beginning at a point in the South line and 60.00 feet East of the SW corner of the NW 1/4 of Section 8, T27S, R2E of the 6th P.M.; thence bearing N89°19'50"E along the South line of said NW 1/4 a distance of 600.00 feet; thence bearing NO°33'40"W a distance of 717.08 feet to a point in the South line of Bradley Fair Parkway, said point being on a curve to the right having a radius of 380.00 feet and a chord of 24.54 feet bearing S87°35'18"W; thence along the South line of Bradley Fair Parkway along said curve through a central angle of 3°42'05" an arc distance of 24.55 feet;

thence along the South line of Bradley Fair Parkway bearing S89°26'20"W a distance of 575.47 feet; thence bearing S0°33'40"E parallel to and 60.00 feet East of the West line of said NW 1/4 a distance of 717.42 feet to the point of beginning. Containing 9.87 Acres more or less. Generally located on the southeast corner of Rock Road and Bradley Fair Parkway.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting that Parcel 8 be amended to change the maximum gross floor area and building coverage if the parcel is developed with several retail and related uses rather than a single department store, and to change the limitations on building signs.

Currently, Parcel 8 could be developed with two uses similar to those in Parcel 7, the main site of Bradley Fair, with up to 12,000 square feet in floor area, plus one of two options for the development of the balance of the tract. The first option is development of up to nine buildings with a maximum of 45,000 square feet. The second option is to develop a department store with up to 118,000 square feet in floor area and a maximum of 60,000 in building coverage.

This request would give the applicant a third option. Parcel 8 could also be developed with up to nine additional buildings with uses being the same as permitted in Parcel 7. In this case where the parcel were developed with a number of "LC" and office uses instead of one large department store, the maximum gross floor area and the maximum building coverage would be limited to a total of 95,000 square feet, for a floor area ratio of 22 percent. The maximum size of any single use or tenant on the parcel would be limited to 60,000 square feet.

The only other requested amendment to DP-191 is to adjust building sign limitations for Parcel 8. Currently building signs are permitted on the north and west elevations, but are limited to 100 square feet in size and the height of letter on the building signs is limited to three feet. The applicant requests they be allowed building signs of up to 200 square feet in size and letters up to four feet in height if the sign is located more than 300 feet from Rock Road or Bradley Fair Parkway. This is well below the maximum size of building signs allowed by the Sign Code of up to 20 percent of a building elevation, up to 400 square feet in total size.

The surrounding area includes Bradley Fair and several restaurants to the north of this site. An office complex and apartments are across Rock Road to the west. The property is bounded on the south by railroad tracks and a 160-acre residential estate. Just east of the site, single-family homes are being constructed in "The Belmont," a development that is part of Wilson Estates. The property is zoned "SF-6".

CASE HISTORY: The property is currently unplatted, but was approved for "LC" zoning of the entire parcel as part of the zoning case, Z-3308, in conjunction with DP-191 Amendment #10 approved on February 9, 1999.

DP-191 was established April 25, 1988, and was first amended on November 5, 1991. On November 7, 1995, the Wichita City Council approved the second amendment with an associated zone change request (Z-3177) for additional "GO" General Office and "LC" Limited Commercial areas. The amendment increased the amount of office and commercial uses permitted and made a number of changes to access controls, architectural and signage restrictions, and building height. Staff had originally recommended a lesser height than 55 feet along 21st Street, but then went along with the request when no residents from Summerfield expressed any concerns about height. The site plan submitted as part of that request showed a bank/office building at the southeast corner of Bradley Fair Parkway and 21st Street North.

The C.U.P. was again amended on February 6, 1996 for an additional 1.77 acres located in an area south and east of 21st Street North and rock road, in order to allow for a slightly different site development plan for a proposed commercial development that was approved by the City Council on November 7, 1995. The C.U.P. was also amended on January 16, 1997, to combine existing Parcels 1, 2, and 3, into two parcels, reconfigures a common property line share by DP-191 and DP-201, and allowed banks and financial institutions as a permitted use in Parcel 1. Amendment # 5 increased the building height from 55 feet to a maximum of 65 feet for a portion of Parcel 2, Bradley Fair Estates. In January 1998, the C.U.P. was amended to increase signage and reduce spacing between signs for those parcels located along Rock Road. The City Council denied Amendment # 8 on March 3rd, which was a request to increase the building sign area on Parcel 1 from 32 square feet to 90 square feet.

Amendment #9, in April 1998, was approved for Parcel 2 to increase the building sign size to 100 square feet from 32 square feet for those buildings within the portion of Parcel 2 zoned "GO" General Office; increase the building sign height from 30 feet to 35 feet for those buildings within the portion of Parcel 2 zoned "GO" General Office; increase the building sign height from 30 feet to 58 feet for those buildings within the portion of Parcel 2 zoned "LC" Limited Commercial; reduce the building setback line from 35 feet to 15 feet along the south and east property line of Parcel 2; and increase the maximum floor area for Parcels 2 and 3 from 258,000 square feet to 276,000 square feet with hotel use on Parcel 3 increased from a maximum of 60,000 square feet to 95,000 square feet.

Amendment #10, the most recent amendment combined Parcel 9 into Parcel 8, and approved the entire parcel for "LC" zoning (associated with Z-3308). It was this amendment that set forth the two options based on using most of the tract for office uses or locating one large department store. During the hearing, concerns were expressed about the volume of traffic that the department store would generate. A traffic study, "Bradley Fair Shopping Center Traffic Impact Study," HSC Consulting Group Inc., February 3, 1999, was prepared as part of the amendment, but not available at the time of the MAPC hearing. The motion by MAPC included that the applicant and Staff were to review the traffic study to determine the improvements needed to Rock and 21st prior to City Council action. The City Council voted to approve the amendment but to have the details of the traffic improvements determined as a part of the platting process. The Final Plat has been submitted but deferred from MAPC

until traffic improvements are resolved. The traffic improvements identified by the traffic study and from subsequent discussions are to provide dual left-turn lanes on northbound Rock Road and on eastbound and westbound 21st Street North, to extend westbound 21st Street left turn storage, to extend the Rock Road northbound left turn storage, to extend the southbound left turn storage on Rock at Bradley Fair Parkway, and to signalize the intersection of Bradley Fair Parkway and 21st Street. Construction details are being prepared for the improvements. To date, the City and applicant have not reached agreement on the exact scope of these improvements.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial	Commercial development
EAST: "SF-6" Single-Family	Residences
SOUTH: "SF-6" Single-family	Railroad right-of-way, estate
WEST: "GO" General Office	Office development

PUBLIC SERVICES: The site has access directly onto Bradley Fair Parkway, a signalized intersection with Rock Road. There is complete access control along the Rock Road frontage.

Traffic considerations were a major concern during the discussion of Amendment #10. At that time, it was estimated that traffic generation would be 2,442 trips per day for the option with office uses, and 7,469 trips per day with the large department store. The proposed change should generate about the same traffic volumes that were projected for the department store, since the department store would generate fewer trips per square foot than smaller shops and restaurants, but total amount of retail/restaurant type uses would be decreased from 118,000 square feet to 95,000 square feet.

CONFORMANCE TO PLANS/POLICIES: The "1996 Wichita Land Use Guide" and the "Amended Land Use Guide" recently adopted by MAPC both identify this area as commercial. The commercial locational guidelines of the Comprehensive Plan indicates that commercial development should have required site design features which limit noise, lighting, and other activity so as to not adversely impact surrounding residential areas. The Plan also encourages "mixed use" developments.

RECOMMENDATION: This application represents a change from the requested kind of development discussed during Amendment #10. At that time, the applicant requested the property be rezoned from "GO" on the southern portion to "LC". Development would be limited to the 12,000 square feet of retail/restaurant already approved for the northern portion of the parcel, plus one department store. Discussion indicated that if the department store were not constructed, the applicant would pursue office development in conjunction with a limited amount of retail/restaurant uses. The current request adds a third alternative of completing the Bradley Fair Shopping Center with a variety of retail/restaurant uses similar to Parcel 7. Instead of one large building, there would be up to 11 total buildings. No single use or tenant would be larger than 60,000 square feet, thus precluding the large big-box users.

While this represents a departure from the previous request, essentially it completes the development as a unified project. The traffic generated would be slightly less than if a department store would have been developed on the site. There would be no change in access or traffic improvements. The floor area ratio would be decreased from 30 percent to 22 percent; however, the maximum building coverage permitted would be increased from 80,000 square feet to 95,000 square feet. The ability to realize this increased building footprint would be constrained by the applicant's ability to meet other site design requirements, including parking and landscaping. For one story buildings, there is a 35-foot setback and landscape buffer along the eastern property line; for two-story buildings, there is a 100-foot setback and 35-foot landscape buffer. Additionally, there is a 100-foot setback along the south property line adjacent to the railroad tracks.

The requested increase in building sign size and letter height is still below that permitted in "LC". By restricting building signs to the north and west elevations, and by limiting the increased size and letter height to the areas set back at least 300 feet from Rock Road and Bradley Fair Parkway, the impact of these increases should not be significant.

The details on traffic improvements required as part of Amendment #10 are still being finalized as part of the platting process. Any action taken on this request should not be viewed as amending, altering, or reducing any of the traffic improvements required by Amendment #10.

Based on these conditions, plus the information available prior to the public hearing, Staff recommends the request be **APPROVED subject to the following conditions:**

1. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
2. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
3. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
4. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Commercial properties, including Bradley Fair Shopping Center, are located to the north of this site. An office complex is located across Rock Road to the west, along with apartments and also commercial development to the northwest. South of this property are railroad tracks, with a residential estate bordering the tracts. Just east of this site are new single-family homes being constructed on property zoned "SF-6".
2. The suitability of the subject property for the uses to which it has been restricted: The site is already approved for "LC" or "GO" type uses, although the requested amendment revises the approval by allowing multiple structures on the site with reduced overall gross floor area, but increased potential building footprint. The amendment should not significantly alter the type of uses permitted on this site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This development should not impact the commercial and office development located to the north and west of this parcel except the increase in traffic, which was already considered during the previous amendment. The single-family homes to the south and east should be screened and buffered by the required masonry wall and landscaping, plus the building setbacks should help mitigate the impact of the commercial uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The project is in conformance with the adopted Comprehensive Plan which identifies the area as appropriate for commercial uses.
5. Impact of the proposed development on community facilities: This development will add significant traffic to Rock road and 21st Street North. However, through the traffic improvements already agreed to, these impacts should be mitigated.

GOLTRY "This request is adjust Parcel No. 8. The current zoning is 'SF-6', although it has been approved for first 'GO' and 'LC' and previous amendments. It is just subject to platting and the platting hasn't been completed, which is why it still appears as 'SF-6' on the property. The basis for this request is two-fold. One is to add an option 'C' to the possible range of development that would occur on Parcel 8, and this third option would be to allow a range of smaller commercial developments to be developed on the site.

The two existing approved types of development that could occur on Parcel 8 are up to 12,000 square feet of retail space, plus 45,000 square feet of office space. That was the initial approval. A year ago, in amendment No. 10, you approved one single large department store for this site in addition to this 12,000 square feet of smaller retail. This would be adding a third leg to the stool in terms of the type of development that they are looking at. The other request is to increase the size of building signs from 100 to 200 square feet in size and to increase the height of letters on building signs from 3 to 4 feet in height, so long as the building signs are more than 300 feet from Rock Road or Bradley Fair Parkway, and that they are limited to the west and north elevations. So that is the request.

The staff report presents the extensive case history of the previous ten amendments, so I will skip through them and over to staff recommendations, which is that staff finds that this is in conformance with the Comprehensive Plan for commercial use and we recommend in favor of the proposed amendment. It appears that the switching from one large department store to arrange smaller retail spaces will probably be about a wash in terms of traffic generation. Although they are decreasing the total amount of square footage that they would have on the site by using these eleven buildings instead of having the one large department store, it is hard to get a real handle on the traffic numbers, but from going to around 130,000 square feet of total gross leaseable area down to the 95,000 square feet of gross leaseable area, you would have about the same, if not less, traffic generated.

We are not recommending any changes in the traffic improvements that were already discussed as part of amendment No. 10 a year ago, which then went to City Council for approval and then they deferred the actual negotiation of all of the traffic improvements to the platting stage and that is still pending because the plat has not been finalized.

In terms of inquiries about the case, I have had a couple of inquiries. One of note is that one of the adjoining properties is the large Koch residential site. They have expressed some concerns to me about the height. The height was approved as part of DP Amendment No. 10 as 45 feet in height. They asked about 35 feet and I will tell you that I spoke with them and I have given them to the agent for the applicant and he has spoken with them and they haven't gotten back with us further on it, so as far as we know, they did not pursue trying to lower the height for option No. 3 from 45 to 35 feet. Are there any questions?"

GAROFALO "Are there questions? Okay. We will hear from the applicant or agent."

ROB HARTMAN "I am with P.E.C., here on behalf of the applicant. We are in agreement with the staff comments and will answer any questions you may have."

LOPEZ "What was the big soft goods store that fell through?"

HARTMAN "Bryn Mar."

MICHAELIS "I have a question of staff. Are we okay with the signage changes?"

GOLTRY "Yes."

GAROFALO "On Page 2, I the third paragraph, it says 'this request would give the applicant a third option'. Is that the option that we are talking about? Is that what the applicant wants?"

GOLTRY "Yes. They would like to have the opportunity to develop it with a range of retail uses similar to the Noodle Cadoodle going northward up through Restoration Hardware. That type of buildings. I think the layouts they are looking at have several fairly large buildings, but nowhere near the size of a department store building, so they would end up with maybe 3 to 6 or something, although they would be allowed up to 11 total buildings on the site."

GAROFALO "I just wanted to make sure that I understood that. Are there any other questions? Is there anyone here to speak in opposition? Is there anyone else to speak in favor of this application, besides the applicant? Okay, we will take it back to the Commission, then."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Commercial properties, including Bradley Fair Shopping Center, are located to the north of this site. An office complex is located across Rock Road to the west, along with apartments and also commercial development to the northwest. South of this property are railroad tracks, with a residential estate bordering the tracts. Just east of this site are new single-family homes being constructed on property zoned "SF-6". The suitability of the subject property for the uses to which it has been restricted: The site is already approved for "LC" or "GO" type uses, although the requested amendment revises the approval by allowing multiple structures on the site with reduced overall gross floor area, but increased potential building footprint. The amendment should not significantly alter the type of uses permitted on this site. Extent to which removal of the restrictions will detrimentally affect nearby property: This development should not impact the commercial and office development located to the north and west of this parcel except the increase in traffic, which was already considered during the previous amendment. The single-family homes to the south and east should be screened and buffered by the required masonry wall and landscaping, plus the building setbacks should help mitigate the impact of the commercial uses. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The project is in conformance with the adopted Comprehensive Plan which identifies the area as appropriate for commercial uses. Impact of the proposed development on community facilities: This development will add significant traffic to Rock road and 21st Street North. However, through the traffic improvements already agreed to, these impacts should be mitigated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
2. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
3. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
4. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

MCKAY moved, **LOPEZ** seconded the motion, and it carried unanimously (12-0).

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11. **Case No. CON2000-00004** - Country Cars, Inc. c/o Howard Cleous and Francis E. Monroe (Owners/Applicants); Co Part Inc. co Paul A. Styler (Lessee/Applicant); PEC c/o Robert Hartman (Agent), request a Conditional Use for Wrecking/salvage yard on property described as:

That part of Government Lot 6, lying East of the Kansas Turnpike and West of the Big Arkansas River, except land condemned for levee in Sedgwick County District Court Case #A-48670, and except the West 100 feet adjacent to the Kansas Turnpike, all lying within Section 15, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; together with the following described tract: Beginning 742 feet East and 1063 feet North of the Southwest corner of Government Lot 7 in the Southwest Quarter of Section 15, Township 28 South, Range 1 East; thence East 216.6 feet to a hedge fence; thence Northwesterly along the hedge fence a little over 266 feet to an iron stake; thence West 178.6 feet; thence South 266 feet to the point of beginning, located in Sedgwick County, Kansas. Generally located north of 47th street south and east of the Kansas Turnpike (4510 S. Madison).

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to permit a wrecking/salvage yard on a 31 acre unplatted tract generally located north of 47th Street South and east of the Kansas Turnpike (4510 S. Madison). The subject property is zoned "LI" Limited Industrial, and a wrecking/salvage yard is permitted with a Conditional Use in the "LI" district. The applicant is proposing to expand an existing wrecking/salvage yard currently operating on the southern portion of the site. The existing wrecking/salvage yard is apparently an illegal non-conforming use that began operation between 1992 and 1997 according to aerial photographs of the site.

The surrounding properties are developed with industrial uses that are buffered from nearby residential development by the Arkansas River on the east and the Kansas Turnpike on the west. The adjacent property to the north is developed with a construction/demolition landfill owned by Boeing and located on property zoned "LI" Limited Industrial. The adjacent properties to the south are developed with wrecking/salvage yards, vehicle sales lots, vehicle repair shops, and single family residences on property zoned "LI" Limited Industrial. The nearest properties zoned for and developed with residential uses are a manufactured home park located approximately 300 feet to the west and buffered by the Kansas Turnpike and single family residences in Oaklawn located approximately 800 feet to the east and buffered by the Arkansas River.

The applicant has submitted a site plan (attached) showing the proposed use of the subject property. The site plan shows an entrance consisting of two gates along Madison with an office building located between the two gates. A car receiving and auction area is shown on the southernmost portion of the property. Employee and customer parking is shown along the western edge of the property adjacent to the Kansas Turnpike. The majority of the property is shown for car storage, which is proposed to be implemented in six phases. The entire site is shown to be enclosed by 8-foot high metal panel fence.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"LI" Landfill
SOUTH: "LI"	Wrecking/Salvage Yard; Vehicle and Equipment Sales, Outdoor; Vehicle Repair, Limited and General; Single Family
EAST:	SF-6" Single Family
WEST:	"MH" Manufactured Home Park

PUBLIC SERVICES: This site has access to Madison, a two-lane paved local street that accesses 47th Street South (a four-lane arterial) two blocks south of the site. The 1997 traffic volumes on 47th Street South are approximately 18,000 vehicles per day. The 2030 Transportation Plan estimates the volumes on 47th Street South to increase to approximately 23,000 vehicles per day, but this estimate does not include the impact of the recently approved commercial zoning located south of 47th Street South between Broadway and I-135. Municipal water and sewer services are available for extension to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to platting within one year and the following conditions:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. The site shall be developed in accordance with a landscape plan approved by the Director of Planning. The landscape plan shall provide for one shade tree (or equivalent) per 30 lineal feet along the west property line where adjacent to the Kansas Turnpike.
3. Any on-site storage of fuels, chemicals or hazardous wastes or materials must be approved by the Wichita-Sedgwick County Department of Community Health. The applicant shall permit inspections of the site for soil and groundwater contaminants by the Wichita-Sedgwick County Department of Community Health. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells on the property to monitor the quality of groundwater and shall pay the cost of an annual groundwater test for contaminants by the Wichita-Sedgwick County Department of Community Health.
4. The applicant shall pay a yearly fee to the Wichita-Sedgwick County Department of Community Health to offset the cost of inspection by the Environmental Health staff. In no event shall the said fee exceed the actual and direct cost of such inspection.

5. The applicant shall implement a drainage plan approved through the platting process that minimizes storm water runoff into the Arkansas River and other adjacent surface water bodies to minimize non-point source contamination of surface waters.
6. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
7. Any violation of the conditions of approval shall render the conditional use permit null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding properties are developed with industrial uses that are buffered from nearby residential development by the Arkansas River on the east and the Kansas Turnpike on the west. The adjacent property to the north is developed with a construction/demolition landfill owned by Boeing and located on property zoned "LI" Limited Industrial. The adjacent properties to the south are developed with wrecking/salvage yards, vehicle sales lots, vehicle repair shops, and single family residences on property zoned "LI" Limited Industrial. The nearest properties zoned for and developed with residential uses are a manufactured home park located approximately 300 feet to the west and buffered by the Kansas Turnpike and single family residences in Oaklawn located approximately 800 feet to the east and buffered by the Arkansas River.
1. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LI" Limited Industrial. The property is apparently suitable for the industrial uses to which it has been restricted.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on nearby residentially zoned property should be minimized by the site's significant buffers, the Arkansas River on the east and the Kansas Turnpike on the west.
3. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development.
4. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

KNEBEL "This area is already developed, it kind of appears on the aerial there. It is not real clear, but there are a couple of rows there now that the applicant is using, technically, as a vehicle storage yard, which is a permitted use, but the salvage and wrecking portion of it is something that they are interested in expanding into, which requires a Conditional Use to permit that in the Limited Industrial zone."

The site plan that the applicant submitted; it consists of an entrance along Madison and an office building in between the entrance and the exit and then an auction area there on the southernmost property. It shows that the site would be developed in six different phases with the first and existing phase being the only phase at this time, and expanding, I think in 200-foot increments to the north as additional vehicles were required. The parking is proposed for along the western boundary of the property and the site would be enclosed in an 8-foot metal fence. The fence is currently there.

The Land Use Guide indicates that this area is appropriate for industrial development and as proposed, the development meets the locational guidelines for industrial development. Based on that, staff is recommending approval subject to platting and a set of conditions recommending landscaping along the Turnpike to screen the view. We are also recommending several conditions regarding controlling pollution on the site and any run-off that might occur into the Arkansas River where it might get into the groundwater in the area and are requiring the applicant to comply with some inspections and pay a fee to cover the cost of those. I am available for questions."

BARFIELD "Does this border the Turnpike?"

KNEBEL "Yes. The western boundary of the site borders the Turnpike."

WARREN "Is the fee something already established, or is that something we are requiring as a condition that is unusual?"

KNEBEL "It is unusual. It is different."

WARREN "I didn't think we got into establishing fees. I didn't think that was something that normally we did. Marvin?"

KROUT "We have, on one or two other occasions, such as landfills, where we were concerned about the potential for pollution and thought that the approval would lead to an extra expense for monitoring the site and we have, in those other cases, asked for the cost of that extra expense to be paid. I think that it is a reasonable condition of approval in order to monitor the site and avoid the extra cost of establishing a fee during that. So, we have done it before. But it is not very usual."

WARREN "Well, the way we are doing it here is kind of an open check book. Without establishing that fee I don't know if the guy has any idea what he is committing himself to. I just think it is unusual and don't think it is this board's position to be determining fees. I think that is more of a legislative action on behalf of whoever administers to that. They certainly have that right and I don't have a problem with it, but I don't think this board ought to be doing it."

GAROFALO "Apparently we have the right to put any condition on a Conditional Use permit that we deem necessary."

KROUT "Yes. As long as it is reasonable."

WARREN "Before, we have resisted taking a position that we are legislative, in that sense. We are more advisory. Fees get to be...."

GAROFALO "But this is not advisory."

WARREN "But this is just a recommendation, and this says 'the applicant shall pay a yearly fee.'"

BARFIELD "But it comes under recommendation. It is something that we could strike out."

GAROFALO "And this is a final action."

PLATT "We are the legislative body here."

GAROFALO "Yeah, with a Conditional Use permit."

WARREN "I think if we are going to do this, we had better establish that fee. I really think it ought to be taken out."

MICHAELIS "I guess my opinion would be to have something either established that the applicant knew was going to be a cost that he could get up there and say yes or no to, or eliminate it. At this point, I would be more in favor of eliminating it."

OSBORNE-HOWES "Marvin, you have said that we have done this before. Can you give us an example, and is it in a similar situation? Is there a precedent, or is this brand-new?"

MCKAY "We have done this with Ritchie over on Webb Road a number of years ago where they had to go through an inspection and had to pay for the inspection fee." That has been 5 or 6 years ago."

OSBORNE-HOWES "Is that the last time you can remember doing this?"

MCKAY "I don't know. I would like to hear from the applicant. Maybe he agrees to it."

BARFIELD "Well, what is he agreeing to?"

MCKAY "The fee."

GAROFALO "Okay, are there no more questions of Scott at this point? Okay. We will hear from the applicant then."

ROB HARTMAN "I am with P.E.C., here on behalf of the applicant. I, too, am a little concerned about Item No. 4, not knowing what that fee is. This is not a landfill; they are just storing cars here as an insurance pool. We are not putting anything into the ground. I don't see the real concern."

MCKAY "Have you ever seen the one on 53rd Street?"

HARTMAN "Yeah."

MCKAY "And you say they aren't putting anything in the ground? Be careful, now."

HARTMAN "I am sure there is stuff that could drip onto the ground."

MCKAY "Okay, but it is not going into the ground?"

HARTMAN "And they are going to, as far as when we get into the platting of this, there will be some steps taken to control the drainage on-site. I think maybe that could take care of some of this in the detention areas."

KROUT "Is this a county case?"

HARTMAN "It is a city case."

KROUT "Okay. Does the City have local licensing separate from the State for a salvage yard?"

HARTMAN "I don't know, as far as the licensing goes on this, what their requirements are."

KROUT "I'm sorry we didn't ask that question, but maybe that is what you are suggesting is that if we have a concern about these uses that maybe the City ought to have a licensing requirement and charge a fee that will cover the cost of inspections for other uses, not just this one, as a policy."

WARREN "Sure. That is their job."

MILLER "The inspection fee is an hourly rate that is capped at \$1,000 per year, so if they don't need it all, they won't go up to \$1,000, but that is the maximum."

WARNER "Is this something that is done automatically by the Health Department, or does it need to be a part of this condition?"

KROUT "I think that unless we bring it to the Health Department's attention, they will tend to act in response to complaints, and if no one is complaining that there is a problem on the site, then they won't have a regular inspection of these uses."

WARREN "To the applicant, are you in agreement with all of the other conditions?"

HARTMAN "Yes, we are."

HENTZEN "That white thing we see on the aerial is that a fence?"

HARTMAN "Yes, that is what is fenced now. They will continue fencing as they continue to expand."

HENTZEN "I was down there, and I think the map shows that the south part of the property already has cars on it that should be inside the fenced area."

HARTMAN "Yes. I believe this fence right now is on the property line and it will have to be moved back 100 feet to the east and there will be a landscape buffer between the highway and the fence."

HENTZEN "I want to tell you that that fence looks pretty good that they have down there. I was expecting to see a real mess, but that fence, I believe, is 8 foot high and buffered pretty well."

OSBORNE-HOWES "Now that you know it is \$1,000 and it is hourly and it is capped at \$1,000, does that bother you still?"

HARTMAN "It kind of does. I think I agree that if it is going to be a city policy that you will make it a city policy. Otherwise leave it out."

GAROFALO "Is there anyone else here to speak in approval of this case besides the applicant? Is there anyone here to speak in opposition?"

TIM WALKER "I own Space Age Manufacturing, just to the south of this property. I have been here for 18 years and Space Age Manufacturing has been there for over 20 years. I don't know where the pictures that were on the screen were taken, but I will tell you what, if you go down there today, it doesn't look that way."

On Madison Street, the parking is full of burned out and wrecked automobiles on the parking. Along the streets there are semi-trailer trucks sitting with wrecked automobiles on them. The semi-trailer trucks have destroyed the street, there are potholes in it. If you had an overview of the plan of the area there, if you will notice right next to it south, I have a nice lawn. (Indicating) This is my property over here. These semi-trailer trucks come over here and make a turn around here and run over my lawn and leave deep tracks in there. Somebody has come in, like a hotrod automobile and dug a furrow in my drive, ran into the side of my building.

Now, I realize that this is a private matter and I can get this settled if I have \$175 an hour to hire an attorney, but I am telling you that we have one salvage yard down there now and I can show you some pictures here that you won't believe, if you want to look at them. These are pictures I have taken of the salvage yard next to it. Not only that, but there are two hot rod automobile building companies down there and they use Madison Street for a drag strip. Somebody is going to get killed down there one of these days. What I am trying to say is that we have one salvage yard down there now, and I don't think we need another salvage yard. There are railroad ties on the parking along Madison Street and they have come in there now and evidently you are going to approve this, because they have come in there now and they are rebuilding the building and they are putting up these fancy fences and everything, but they are not putting up a fence between my property and their property.

I think, if this goes through, they ought to plat the deal. They have come in here and dug out. I had my area platted. It is the only one down there. It is the Roger Brown Addition. There were survey stakes in it. They have dug out my survey stakes now and I called the survey company and they want \$1,000 to come out and put them back in. I think they ought to plat this area and I think they ought to put a fence up between my property and theirs, and furthermore, I think there ought to be a fence up between the existing salvage yard and my place. If you look at those pictures, you will see what a mess they have down there. This used to be a pretty nice neighborhood. There are people who live down there; there are three or four residential houses down there.

I just don't understand why the City of Wichita allows this to go on. They are dumping oil on the ground. If you look at some of those pictures, it will show you where they have killed the grass, where they have dumped oil on the ground. One of these days you will go out there and sue me for contamination of the ground, I suppose, and make me pay for it. They bulldozed out all of the trees, including trees on my property. I really feel like I am being run out of the neighborhood. I guess that is about

all I have to say. I just don't think we need another salvage yard down there because we have one. I don't know how big it is, but it is several acres. They have dug out the ground and everything and evidently they are going to black top it. It all slopes towards my property. What they have dug out right now, if you had been down there a week ago, my neighbors are kidding me about having the value of my property raised because I now have a lakeside property. All of that water, when they blacktop it is going to run over, right on me and flood it. Either that or they are going to have to dig a ditch and put it out here on this other salvage yard here. This is all salvage yard here."

HENTZEN "I have a question for the applicant. The pictures of the airplanes, are they on the applicant's property or somebody else's property."

HARTMAN "That is not our property. That fence is going to get changed."

WALKER "There is no fence there."

HARTMAN "Not yet. There will be with this plan. There will have to be a fence there. They will have to comply in order to get their Conditional Use approved. There will be a fence around here and this will be platted."

GAROFALO "Are there any other questions of Mr. Walker? Okay, sir, thank you. Is there anyone else to speak in opposition? All right. The applicant has two minutes for rebuttal and we can ask him questions."

HARTMAN "The fence itself is not in the final position. It is going to be according to this plan. It will be platted. The drainage considerations will have to be handled at that time so that we are not draining onto his site. I think we have taken care of his concerns or will take care of his concerns with this plan."

WARNER "Is this a carpool, or is it a salvage where they salvage parts and sell them and all of that kind of stuff?"

HARTMAN "An insurance carpool."

WARNER "So these vehicles are going to turn over? They are going to sell these vehicles and some will come in and some go out, but there are not people out there taking out generators and selling them to the public?"

HARTMAN "That is my understanding. This is an insurance carpool."

BARFIELD "Well, it says here 'salvage yard'."

KROUT "I don't think they would be in for a Conditional Use if they weren't asking to do something other than to store cars. Scott, can you help with that?"

KNEBEL "I don't know any of the specifics about the operation, but if you grant them a Conditional Use for wrecking and salvage, they can do exactly that."

BARFIELD "I have never seen a salvage yard that didn't sell parts."

MCKAY "Insurance pools don't."

BARFIELD "An insurance pool is not wrecking. This says 'wrecking and salvage yard.'"

HENTZEN "That is why I asked the question."

PLATT "And vehicle and equipment sales."

HENTZEN "I want to be sure and understand. What these pictures are, or up there where those airplanes are and up near this man's property, you are telling me that that is not the same owner as you represent?"

HARTMAN "I don't believe so. Our property is already defined. You can see it on the aerial from this site plan."

HENTZEN "That is what I understood, but I just want to be sure because these pictures depict very well what is right next to his property. But if that is not your applicant, never mind."

HARTMAN (Indicating) "I believe what he is talking about is this site right here. Our property does this."

HENTZEN "Okay."

BARFIELD "What type of screening are you contemplating?"

HARTMAN "We are going under the recommendations of the Planning Department, screening the west property line from the Turnpike. There will be an 8 foot fence that will be continuously around the entire property and then there will be trees and landscaping along the Turnpike, one tree every 30 feet."

BARFIELD "What will be the construction of that screening?"

HARTMAN "It will be just like you saw in the picture, that white metal fence, 8 foot high."

BARFIELD "Is that a barb wire fence we are talking about?"

HARTMAN "No. It is a white metal panel fence."

BARFIELD "It will be how tall?"

HARTMAN "Eight feet tall."

GAROFALO "Are there any other questions?"

KNEBEL "I do have a follow-up to Commissioner Warner's question. Lisa took in the application from the applicant and they told her that the State was requiring them to get permission to do salvage because the vehicles are inoperable and in order to get the salvage license they need to operate the vehicle insurance pool."

OSBORNE-HOWES "It seems like the last time we dealt with something like this we talked about there being a height restriction that the cars, and I doubt that these would ever be piled up, but that they would never be above the height of the fence. Does anyone else remember that?"

WARREN "I think that was steel yard. Salvage steel."

MICHAELIS "It was that one that was hidden behind those 50 foot tanks."

WARREN "Yeah, and they could pile that steel up."

OSBORNE-HOWES "So there is no reason to include that restriction on this one?"

WARREN "I don't think you can stack cars too high."

LOPEZ "Scott, clarify what you just said. In order for them to get the state salvage license they need to apply for an insurance pool?"

KNEBEL "They want to operate it as an insurance pool and in order to do that, they have to have a salvage license from the state. The state won't issue the salvage license if they are not permitted to operate a salvage business at their location."

GAROFALO "Are there any other questions of Scott or the applicant? Okay, thanks."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding properties are developed with industrial uses that are buffered from nearby residential development by the Arkansas River on the east and the Kansas Turnpike on the west. The adjacent property to the north is developed with a construction/demolition landfill owned by Boeing and located on property zoned "LI" Limited Industrial. The adjacent properties to the south are developed with wrecking/salvage yards, vehicle sales lots, vehicle repair shops, and single family residences on property zoned "LI" Limited Industrial. The nearest properties zoned for and developed with residential uses are a manufactured home park located approximately 300 feet to the west and buffered by the Kansas Turnpike and single family residences in Oaklawn located approximately 800 feet to the east and buffered by the Arkansas River. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LI" Limited Industrial. The property is apparently suitable for the industrial uses to which it has been restricted. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on nearby residentially zoned property should be minimized by the site's significant buffers, the Arkansas River on the east and the Kansas Turnpike on the west. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to staff comments, and the deletion of Item No. 4.

WARREN moved, **MICHAELIS** seconded the motion.

OSBORNE-HOWES "Marvin, is that what you are looking at, or are you doing something else? About the height."

KROUT "Yes, I am trying to see whether or not we have supplementary regulations that speak to that for the Conditional Use."

KNEBEL "To the height of the storage?"

KROUT "Yes."

KNEBEL "I don't believe there is."

OSBORNE-HOWES "This may be an insurance pool, but it may, 20 years from now, be an auto salvage, so I thought if we could put something in there about the limit of the height, it would make sense."

WARREN "Do you have any idea what restrictions we have to back this?"

OSBORNE-HOWES "They shouldn't go above the fence."

KROUT "Right. Not above the height of the fence."

WARREN "So it would be eight foot?"

KROUT "Right. And it is not in the standard conditions of approval, so you would have to add it."

OSBORNE-HOWES "Would you accept that?"

WARREN "Well, I am hesitant to because I don't know what the standards would be for this industry. I hate for us to do this without some more thought and consideration, to just arbitrarily say 8 foot. I don't know if that is good or bad."

MICHAELIS "I think what we have to realize is that we cannot hide everything. When you are driving down that Turnpike, that Turnpike is already about the height of the fence, so just sitting in the car you are going to see something whether it is one car tall or two cars tall and you are not going to be able to hide that. If we are talking industrial areas, and this is what this use is being used for, I certainly wouldn't support putting a height limitation on it. You are limited by the vehicles themselves."

JOHNSON "I think the other reason is going out, and I can see the problem the neighbors have with the one that is south of this. There is nothing screening anything. I guess I don't want to see any more like that, and all of a sudden there is a plan where they are going to landscape along the Interstate and that type of thing. The reason I don't want to do anything on a height restriction would be that in the event that there is a motor home that has been wrecked or whatever, and they pull that in there and it is taller than the fence, and all of a sudden somebody is on them because they have a motor home or something in there, and that is the only reason I would be scared of the limit. I see Susan's point."

OSBORNE-HOWES "Unless we could say 12 feet or 10 feet or something. I mean, if we are going to the trouble of having an 8-foot fence and we are doing landscaping to screen it, and it could go up. I have driven by salvage yards where, my gosh, they are up to 20 feet maybe. It is just ugly. That is just my opinion."

LOPEZ "Marvin, you had stated that Condition No. 4 was in there to alert inspection so that they could go by and inspect these. If it is not in there, is there nothing to alert them, or how else would they do it?"

KROUT "They would make it a low priority unless they would be paid to do it."

LOPEZ "I won't be supporting the motion."

PLATT "I have been having trouble with this since the beginning. In general, it really disturbs me that on a major entrance to the City of Wichita we are expanding salvage yards. I don't like that. Secondly, I don't like the fact that we are expanding our salvage yards along the Arkansas River. It seems to me that both of those are sites that demand our putting our best foot forward instead of our worst. Granted, we've got ourselves locked into putting salvage along the river, and of course the Interstate then went along with the river, too, which is logical, so we are kind of locked into it. I can understand that, and I can understand why those people want to expand. It is a real tough question. I was inclined to be thinking that I would support it on that basis even though I don't like it. I don't know how to reverse the trend and say we ought to be beautifying the river instead of doing this to it."

But then when I find that the people are opposed to having an inspection, which they might have to pay a little bit for, and when we aren't going to put any kind of a limit on how high they can pile junk stuff in a salvage yard, I guess I am going to end up voting against it."

KROUT "I guess I would encourage the Planning Commission to at least consider a height limitation of some kind. I agree with Commissioner Platt's remarks about this being an entrance to the community, and I think that if we had thought about it a little bit more, we would have included a height limit of some kind. I think that that is an appropriate added condition. I can see how the issue of an inspection that you would want to trace that in more of a license manner with the City Council and can suggest that to them, but I think that we have seen some pretty unsightly salvage yards. You heard the applicant say that this is just supposed to be a temporary insurance pool, so I don't think they have any need for going up and stacking automobiles, but they certainly could, and they are much more unsightly when they do that."

MICHAELIS "I guess I would just like to say, and I don't disagree with any of the comments that are being made here, but here again, I think we are losing focus somewhat on what we are supposed to be doing. If we are following the guidelines of Limited

Industrial zoning, and if we want height limitations, then let's change the zoning and let's put height limitations in there, but let's not arbitrarily one time we do, one time we don't. We need some form of consistency, and if we want to tie it to a usage, then we can tie it to a usage, but I think we need to get a little more definitive on that and not arbitrary."

KROUT "Well, respectfully, I disagree. I think the reason we have Conditional Uses is to look at them on a case-by-case basis. If you are in the interior of a site plan and you are doing outside storage, and you are by mini-warehouses, then you don't need ask for a height on there, but in this case, when you are along the Turnpike as an entrance to the City, I think it deserves some special consideration. That is why we do take them one at a time."

MARNELL "I think in the case of Item No. 4, I agree that we should take that out. If the legislative bodies want to inspect all salvage yards, that is fine. They ought to do it that way rather than us doing it to one and not to the other folks who are in that business. They probably should all be inspected. I don't have a problem with it from that aspect."

On the height thing, I really don't have a big headache with that except I would rather just see that they are not going to stack vehicles. Let's just have them not stack vehicles and not make it some specific height, just that they not stack vehicles. I could support that."

BARFIELD "Ladies and gentlemen, let me say this. Let's go into this with our eyes open. In the first place, I have never seen a single salvage yard. They are like mobile homes; they tend to congregate, okay? If any of you can think of where there is one single salvage yard, I would like to know about it. I can guarantee you that once we establish this and it has been established, there will be more. They always tend to congregate. Now, when it comes to this height thing, you can go down on 29th Street there, right off of Broadway and see them stacked 20 feet in the air. It is not important to have a height restriction there because of the fact that it backs up to a railroad yard. So it is immaterial. Here, out on the Turnpike, I think it is important. We are talking about two entirely different subject matters. So, like I said, let's just go into this with our eyes open because I think we will see, 10 years down the road, there will not be two salvage yards, there will probably be seven."

MCKAY "The motion that was made was that we approve it subject to staff comments and leaving out Item No. 4 and leaving out the heights. I don't have a problem with putting in the fact that it needs to be inspected because we have done this in the past, and a Conditional Use is exactly that, a Conditional Use. It is kind of a special hybrid all to itself. To me, it is a privilege for the person that is coming in here asking for it because of the zoning situation. Who was the maker of that motion?"

WARREN "I am, and I am going to modify it."

MCKAY "Let me ask you this. Would you agree to a modification in it to say that the maximum height would be 12 feet or 13 feet because somebody mentioned motor homes and there aren't many motor homes that are over 13 feet high because they can't get underneath the viaducts, and if they can't put one vehicle on top of the other, single storage, that they be inspected, not to exceed \$1,000 per year, which is what we have been told it is going to be."

AMENDED MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. The site shall be developed in accordance with a landscape plan approved by the Director of Planning. The landscape plan shall provide for one shade tree (or equivalent) per 30 lineal feet along the west property line where adjacent to the Kansas Turnpike.
3. Any on-site storage of fuels, chemicals or hazardous wastes or materials must be approved by the Wichita-Sedgwick County Department of Community Health. The applicant shall permit inspections of the site for soil and groundwater contaminants by the Wichita-Sedgwick County Department of Community Health. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells on the property to monitor the quality of groundwater and shall pay the cost of an annual groundwater test for contaminants by the Wichita-Sedgwick County Department of Community Health.
4. No salvage shall be stacked to a height higher than 10 feet.
5. The applicant shall implement a drainage plan approved through the platting process that minimizes storm water runoff into the Arkansas River and other adjacent surface water bodies to minimize non-point source contamination of surface waters.
6. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
7. Any violation of the conditions of approval shall render the conditional use permit null and void.

WARREN moved, **MICHAELIS** seconded the motion.

GAROFALO "So salvage not to exceed 10 foot."

MCKAY "That is what we were talking about when we said you can't stack it. I don't care if it is 2-foot tall or 15-foot tall, you can't stack it. Period. Whether it is smashed down or not."

BARFIELD "I've never seen a salvage yard that didn't stack."

MCKAY "I can show you one on 53rd Street North that is exactly what this is supposed to be, and they don't stack them, because they turn around and sell them."

WARREN "Well, I understand, but occasionally, they are going to have to have to haul them out of there, and to do that, they've got to stack them until the guy can come in and get them. They may not stack them permanently, but they stack them."

MCKAY "You are talking about them going in there and flattening them down, and stacking them. That is not what I am talking about."

WARREN "Yeah, flattening them and stacking them up until the truck comes for them. I will leave the motion stand as it is, stacked salvage."

KROUT "Did the second agree to that?"

MICHAELIS "Based on Commissioner Barfield's comment and your slap on the hand, I think I would. In retrospect, that does make good sense, so I will agree to that, but I couldn't agree with saying just one vehicle. So you are basically saying 10 feet of salvage unless it is a motor home or a single vehicle that would exceed that?"

WARREN "I am just going to use the word 'stacked' and hope that makes sense."

GAROFALO "I think I am going to make a comment that I agree with this limitation. One of my concerns is about contamination, but in No. 4, making sure that places like this are inspected, at least annually, if staff thinks that the Health Department may not get to them to inspect annually, I think these places need to be inspected. I think we maybe need something in there to require that."

MICHAELIS "Marvin, could we make that part of the motion that we would recommend to the City Council that a policy be put into effect for the inspection policy that would apply to all of these kinds of uses so it is fair to everybody?"

KROUT "And recover the costs if it is appropriate?"

MICHAELIS "Right."

MCKAY "That would be for all Conditional Uses, then."

MARNELL "I wonder if we shouldn't do that as a separate motion then, to send to the Council."

KROUT "Yes. That would be more appropriate."

HENTZEN "I hate to eliminate Item No. 4 completely. I would like to say that the applicant may be required to pay a yearly fee to the Sedgwick County Department of Community Health. What I am saying is that if the Health Department, or anybody else does make an inspection that they should be able to recover the cost of the inspection at the property. Do you understand what I am saying?"

MICHAELIS "I think that is what we wanted to do with a separate motion."

HENTZEN "No, what No. 4 says is 'the applicant SHALL pay a yearly fee, but if they never make an inspection, they shouldn't have to pay. But if an inspection made, and I think the Health Department should do that, then they can recover the money from the applicant.'"

MICHAELIS "That is what I would like to do in a motion separate from this, so it would be fair to everybody."

GAROFALO "Yes, to recommend it to the City Council. Because I think all of these places need to be inspected."

JOHNSON "Really, the one south of this probably needs to be inspected."

GAROFALO "Yes, and that would include that."

MCKAY "We haven't had this much discussion since George Sherman and Chris Goebel left this Commission."

GAROFALO "Is there any more discussion? Okay, we have a motion to approve, subject to staff comments, and eliminating No. 4 and putting in a requirement of not stacking more than 10 feet of salvage. We have a second to that motion."

VOTE ON THE AMENDED MOTION: The motion carried with 11 votes in favor and 1 in opposition (Lopez).

GAROFALO "The motion carries. Now let's have the other motion."

MOTION: That the Metropolitan Area Planning Commission recommend to the governing body that a policy be adopted to cover yearly inspections on this type of uses in the City

and County, and if a fee is deemed necessary that that would be a recoverable fee from the operator.

MICHAELIS moved.

MARNELL "Can I ask the maker of the motion if they would maybe want to have staff develop this policy and bring it to us before it goes to the City Council?"

MICHAELIS "I don't care if it is developed by staff, the City Council or the County Health Department. I just think some vehicle needs to be put into place. I will leave it up to Marvin to determine who will develop it."

GAROFALO "Yeah, because a Conditional Use permit won't go to the City Council."

MCKAY "Are you talking about Conditional Uses?"

MICHAELIS "I am talking about all of these."

MCKAY "He is talking about salvage yards, but are we also talking about all Conditional Uses being part of this program, which would include salvage yards? How about a Conditional Use for a flower shop or a Conditional Use for this or that, or something else?"

MICHAELIS "I am speaking primarily of salvage yards."

MCKAY "Okay, so you are talking salvage yards only."

WARREN "But I think what you are really saying is to ask staff to draft us a policy?"

MICHAELIS "Yes, and if there is some different verbiage in there, okay."

GAROFALO "Okay, and then come back to us with it."

WARREN seconded the motion.

GAROFALO "Is there any discussion on the motion?"

VOTE ON THE MOTION: The motion carried with 12 votes in favor. There was no opposition.

Michaelis left the meeting at 4:00 p.m.

12. **ZON2000-00007** - Kiser Gateway, LLC & Willard J. Kiser Properties, LLC (Applicant/Owner); Greg Allison, MKEC (agent) request zone change from "*SF-20*" *Single-Family Residential* to "*TF-3*" *Two-Family District* on property described as:

Beginning at the Southwest corner of THE GATEWAY CENTER ADDITION, an addition to Wichita, Sedgwick County, Kansas; said corner lying 1450.01 feet South of the North line of said Northwest Quarter, and 50.00 feet East of the West line of said Northwest Quarter; thence N 89 degrees 06'02"E, 10.00 feet to the Southwest corner of Lot 1, Block 1, of said addition; thence N 89 degrees 06'02"E, along the South line of said The Gateway Center Addition 1088.84 feet; thence S 00 degrees 53'58"E, 263.38 feet; thence S 45 degrees 01'04"W, 193.51 feet; thence S 89 degrees 06'02"W, 958.73 feet to a point lying 50.00 feet East of the West line of said Northwest Quarter; thence N 01 degrees 03'27"W, 398.00 feet along the East right-of-way line of Greenwich Road to a point of beginning. Generally located south of 13th Street on the east side of Greenwich.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant indicates that he wishes to rezone property currently zoned "*SF-20*" *Single-Family District* to the "*TF-3*" *Two-Family District*. The property is 9.82 acres in size and is currently being platted. The applicant intends to construct 22 "twin homes" (duplexes) or 44 dwelling units on the site. The adjoining properties are zoned "LC" Limited Commercial and "SF-20" Single-Family Residential. The application area is a rectangular shaped parcel and is located south of 13th Street on the eastside of Greenwich.

The property north of the application area, platted as the *Gateway Center Commercial CUP*, is a vacant lot and zoned "LC" Limited Commercial District with an approved CUP, the property south is a vacant lot and is zoned "SF" Single-Family Residential, east is property zoned "SF-20" Single-Family Residential, which is adjacent to K-96, and the property to the west is also vacant and zoned "LC" Limited Commercial. Access to the site will be from Greenwich per the platting process.

CASE HISTORY: The property is currently being platted into 22 lots as the *Killenwood Pointe Addition*. The MAPC Subdivision Committee will consider this preliminary plat on April 6th, 2000.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial
EAST: "SF-20" Single-Family
SOUTH: "SF-20" Single-Family
WEST: "LC" Limited Commercial

Vacant Lot
Vacant Lot/K-96
Vacant Lot
Vacant Lot

PUBLIC SERVICES: The site will have access from Greenwich, which is a paved four-lane arterial. Traffic volumes on Greenwich are approximately 3,600 vehicles per day. The 2030 Transportation Plan estimates the volumes will increase to approximately 16,500 vehicles per day. Municipal water and sewer services will be extended from the Preston Trail Subdivision that is located south of the application area.

CONFORMANCE TO PLANS/POLICIES: The *Land Use Guide of the Comprehensive Plan* identifies the application area as appropriate for "medium density residential." The Plan encourages residential semi-attached dwelling units such as duplexes and townhomes. Medium-density residential lots may serve as a transitional land use between low and high residential uses, as well as serve to buffer lower-density residential from commercial uses.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to platting within one year. This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is on the urban fringe of Wichita along 13th Street and Greenwich. A mixture of vacant commercial and residential land characterizes the land use. The property north of the application area is a vacant lot and zoned "LC" Limited Commercial District, the property south is a vacant lot and is zoned "SF-20" Single-Family Residential, east is zoned "SF-20" Single-Family Residential, is adjacent to K-96 and the property to the west is also vacant and zoned "LC" Limited Commercial. The character of the neighborhood will be one of mixed residential and commercial uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "SF-20" Single-Family District that accommodates larger lot residential land uses. The site could be developed as zoned. However, this area has seen an increase in platting and zoning activity to urban density. Rezoning of this property to "TF-3" would not detrimentally impact adjoining property and would provide for a more appropriate density of development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Adjacent properties are zoned "SF-20" Single-Family Residential or "LC" Limited Commercial. Rezoning of this property to "TF-3" Two-Family District will not introduce any new potential uses to the area.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the statement that the application area is appropriate for "medium density residential." The Plan encourages the use of medium and high-density residential development as buffers to commercial uses located at intersections. The site is located near the intersection of 13th and Greenwich. The Plan also discourages the commercial "stripping out" of arterials.
5. Impact of the proposed development on community facilities: Platting should ensure that sufficient street right-of-way is provided on the Greenwich Street front for future expansion. Other community facilities should not be adversely impacted.

CARROLL "This is proposed for the construction of twin homes or duplexes. The applicant intends to construct 22 twin homes (duplexes) or 44 dwelling units on this site. The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for medium density residential and encourages dwelling units such as duplexes and townhomes. I think the applicants are here to answer any questions you might have. I will also respond to any questions."

GAROFALO "Are there any questions of Barry? Okay, thanks. The applicant or agent, please."

GREG ALLISON "I am with MKEC Engineering, representing the applicant. We are in agreement with all staff comments. I would point out that the applicant is in ownership or partnership with other people on all property surrounding this site and has been involved in the Gateway Center, which is to the north that you guys approved a CUP on almost a year ago. I just want to let you know that so that you are aware of their ownership around that. I would be happy to answer any questions that you might have."

GAROFALO "Is that the runway that Raytheon is talking about? Is that it?"

ALLISON "Yes, I think this is the new runway that they have built."

GAROFALO "Is that about a quarter of a mile or so away?"

ALLISON "Yeah, almost a quarter of a mile maybe. Like I said, the applicant owns all of the property in this area here (indicating), but they are also in ownership of about a 40-acre tract all the way up through here as well. So this right here is the applicant's property. It is not Raytheon's. It is probably about a 500 or 600 foot distance on the west side of Greenwich there."

GAROFALO "Well, apparently Raytheon is saying that they wouldn't like to see anything any closer to the runway? That is the way I read that letter."

ALLISON "Right."

MCKAY "I don't know if you remember or not, but we approved that whole corner above this for commercial not over two months ago or so."

ALLISON "Yeah, that is the Gateway Center I was speaking about. That was probably 10 to 12 months ago."

GAROFALO "Okay. Are there any other questions? Okay, let me ask if there is anyone else here to speak besides the applicant in favor of this application? Is there anyone to speak in opposition of the application? Okay, then we will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is on the urban fringe of Wichita along 13th Street and Greenwich. A mixture of vacant commercial and residential land characterizes the land use. The property north of the application area is a vacant lot and zoned "LC" Limited Commercial District, the property south is a vacant lot and is zoned "SF-20" Single-Family Residential, east is zoned "SF-20" Single-Family Residential, is adjacent to K-96 and the property to the west is also vacant and zoned "LC" Limited Commercial. The character of the neighborhood will be one of mixed residential and commercial uses. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "SF-20" Single-Family District that accommodates larger lot residential land uses. The site could be developed as zoned. However, this area has seen an increase in platting and zoning activity to urban density. Rezoning of this property to "TF-3" would not detrimentally impact adjoining property and would provide for a more appropriate density of development. Extent to which removal of the restrictions will detrimentally affect nearby property. Adjacent properties are zoned "SF-20" Single-Family Residential or "LC" Limited Commercial. Rezoning of this property to "TF-3" Two-Family District will not introduce any new potential uses to the area. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request is consistent with the statement that the application area is appropriate for "medium density residential." The Plan encourages the use of medium and high-density residential development as buffers to commercial uses located at intersections. The site is located near the intersection of 13th and Greenwich. The Plan also discourages the commercial "stripping out" of arterials. Impact of the proposed development on community facilities: Platting should ensure that sufficient street right-of-way is provided on the Greenwich Street front for future expansion. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to platting within 1 year.

LOPEZ moved, **MCKAY** seconded the motion.

BARFIELD "I do have some consideration for what Raytheon says about the number of people would not be suitable, at least from their view. What was staff's position on this?"

KROUT "We recommended approval. The area just below, to the south half a mile down to Central is already zoned and I guess we felt that it would be inappropriate to continue the residential pattern up to this site and the difference between single-family and duplex is not a potential. It can already be developed today, platted and developed today for single-family homes as long as they meet the subdivision regulations."

BARFIELD "Let me be sure I understand first what Raytheon is saying. Are they saying that they don't feel comfortable with anything closer than this project?"

GAROFALO "Yes, that is what they are saying."

PLATT "Yes. They are saying 'do not go across the road.'"

MCKAY "And that I agree with."

GAROFALO "They are saying that they are not opposed or in favor, but they don't want anything any closer to the runway."

KROUT "And we would agree with that."

GAROFALO "Are there any other questions? Okay, we have a motion and a second."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

13. **Case No. CON 2000-00003** - YWCA (Applicant/Owner-c/o Susan Farrell) requests a Conditional Use permit to allow a group residence on property described as:

The North 15 feet of Lot 11 and all of Lots 13, 15, 17, 19, 21, 23, 25, 27, 29, 31 and 33, on Fourth Street, now St. Francis Ave., in Burleigh's Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located at 11th Street and North St. Francis (1111 North St. Francis).

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to permit a group residence on a platted one-acre tract of land. This property is zoned "B" Multi-Family Residential and developed within an office building which was formerly used for medical services. The applicant is requesting this Conditional Use to allow a group residence for victims of domestic violence on the site. The adjoining properties are zoned "B" Multi-Family Residential. The application area is a rectangular shaped parcel and is located south of 11th Street and on the westside of North St. Francis. Access to the site is from St. Francis Street. Fencing exists along the west and north property lines. There are 38 parking spaces shown on the applicant's site plan.

The property north of the application is residential (rental) and zoned "B" Multi-Family, the property south is a parking lot and zoned "B" Multi-Family; to the east are medical offices and zoned "B" Multi-Family; to the west is an alley/city park and zoned "B" Multi-Family. According to the applicant, this program has been in operation since 1976 at various locations throughout the City. Law enforcement staff and/or local agencies refer clients. The program is funded by a variety of funding sources. There is a maximum of 34 clients (including children) that can be served and for no longer than 45-days. Currently clients are being housed on the second floor of an older house that poses safety risks for residents and staff. If approved, the clients will move to this newer, one-story, facility. To summarize, this proposed use would provide a safer, more secure, facility for adults and children who have limited housing options.

CASE HISTORY: This program has been in operation since 1976. The current site was platted as the Burleigh's 1st Addition in 1886.

ADJACENT ZONING AND LAND USE:

NORTH:	"B" Multi-Family Residential	Single-Family Residence
EAST:	"B" Multi-Family Residential	Medical Offices
SOUTH:	"B" Multi-Family Residential	Parking Lot
WEST:	"B" Multi-Family Residential	Alley & City Park

PUBLIC SERVICES: North St. Francis 11th is a two-lane residential streets with estimated traffic volumes of 1,188 trips per day. Water/sewer and other municipal services are provided to the site.

CONFORMANCE TO PLANS/POLICIES: The *Land Use Guide of the Comprehensive Plan* identifies this property as "medium density residential." *The plan contains strategies concerning "public safety services which states that the City is to coordinate and consolidate the planning, design and implementation of new/existing facilities to maximize cost efficiency and public safety."*

RECOMMENDATION: The property will be developed in general conformance with the site plan approved by the MAPC. Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The applicant shall obtain all federal, state and local permits;
2. In addition to uses permitted in the "B" Multi-Family District, the site shall be limited to a group residence (maximum of 34 clients) use for victims of domestic violence; and
3. Any violation of the conditions approved, as a part of this request, shall render the *Conditional Use* null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the area is zoned "B" Multi-Family Residential and the adjacent neighborhood to the north is also zoned "B" Multi-Family Residential. The character of the neighborhood is one of mixed residential and medical office/hospital uses. The St. Francis Regional Medical Center is located just south of the site.
2. The suitability of the subject property for the uses to which it has been restricted: The purpose of the "B" Multi-Family Residential is to accommodate high density residential and other complementary land uses. The site was formerly operated as a medical office. This site is currently used as a YMCA office that is a permitted use. The addition of the requested use would be a complimentary addition to the YWCA services provided. The proposed use would be similar to apartment living that is also permitted in this zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. The adjacent properties to the north, south, east and west are zoned "B" Multi-Family Residential. A variety of uses are already permitted

on the properties zoned "*B*" *Multi-Family Residential*. Minimal detrimental effects are anticipated from the proposed *Conditional Use* recommended for this request. The conditions placed on the request mitigate the prospect of a detrimental impact on adjacent properties.

4. Conformance of the requested change to the adopted or recognized *Comprehensive Plan and Policies*: The plan contains strategies concerning "public safety services" which states that the City is to "coordinate and consolidate the planning, design and implementation of new/existing facilities to maximize cost efficiency and public safety."
5. Impact of the proposed development on community facilities: With approval of this project, the projected impact on community facilities is minimal.

MCKAY "I would like clarification. The applicant, the YWCA used to rent office space from me. Doesn't presently, hasn't for probably a year. Tell me if I have a conflict of interest on this?"

KROUT "If you have received money from them that exceeded \$2,000 within the last 12 months, then you probably should step down."

MCKAY "I haven't, but I am going to step down anyway."

CARROLL "The YWCA is the applicant for a Conditional Use to permit a group residence. It is currently zoned 'B' Multi-Family. It is approximately 1 acre in size and is near 11th Street and North St. Francis. The purpose is a temporary shelter for homeless victims of domestic violence. As was noted, the building was formerly used for medical services. There are 38 parking spaces shown on the applicant's site plan and there would be a maximum of 34 clients, including children that can be served but no longer than 45 days. The Land Use Guide to the Comprehensive Plan identifies this property as medium density residential. We are recommending approval, subject to the following conditions:

That the applicant shall obtain all federal, state and local permits; uses in 'B' Multi-family shall be limited to a group residence of a maximum of 34 clients for homeless victims of domestic violence and that any violations of these conditions would render this Conditional Use null and void. The Director of the WYCA is here to respond to any questions that you might have."

GAROFALO "Do we have any questions of Barry first? Okay, then we will hear from the applicant or agent."

SUE FARRELL "I am the Executive Director of the WYCA of Wichita. I think you have all of the information so I am just here to answer any questions you might have."

GAROFALO "Ma'am, is the building there, is it now in use?"

FARRELL "Yes."

GAROFALO "As the shelter?"

FARRELL "No, not as the shelter."

GAROFALO "What is it?"

FARRELL "We have our main office in the front and we moved in there a year ago because of economics. We wanted to be there and oversee the renovations while we fund-raised."

BARFIELD "Ma'am, how many women do you see being there? Do you think that you will go on beyond 34?"

FARRELL "I doubt it. Our current shelter, the capacity is 26. There are probably maybe 4 or 5 three week seasons throughout the year that we go above that and we may have to place them in other shelters until we have room or we may use another resource called Hotels/Motels in Partnership."

GAROFALO "When we talk about 34 clients, are we including the children?"

FARRELL "Yes. Each year, it is about a 50/50 split. We have been running about 300 women and 300 children coming through the shelter in the last five years."

OSBORNE-HOWES "Is this the same as the women's crisis center?"

FARRELL "Yes, it is."

OSBORNE-HOWES "And is there like security there?"

FARRELL "Yes, there are security cameras for their parking, their entrance and we were going to, at some point, put it at the front of the main office, too, but we did that within the first month of moving in."

OSBORNE-HOWES "So this location is conducive to security."

FARRELL "Yes, especially compared to where we are. It is a much less traveled street and after 20 years, we need to move."

OSBORNE-HOWES "I know the site of your current location is not published or not talked about. Will this be somewhat similar once it is up and going, or is there enough security to not worry about that?"

FARRELL "Well, I am here. We will portray that façade as much as we can and try to protect the confidentiality of the location and tell the clients who come in that breach of that confidentiality may result in their placement at another shelter, and the same with staff. Usually the people who shouldn't know find out where it is. That is what we have found. But we haven't had any major problems where we are and have been for 20 years."

BARFIELD "Speaking of security, in that general area where you are, I think St. Francis provides 24 hour security. I think that will be more secure than anyplace I can think of."

FARRELL "Very good."

KROUT "Is there a particular reason why you call these homeless victims of domestic violence? I say that because, and I am sorry, Barry, that I didn't get a chance to get with you on this, but the City Attorney suggested that we drop the term 'homeless' and that would protect you so no one would question how they got there. Really, if we just said victims of domestic violence, that would be specific enough. Is there some reason for that?"

FARRELL "No."

KROUT "Then our suggestion would be, so that no one would ask if these people were really homeless, that you would drop that term in the conditions."

FARRELL "They are primarily victims of domestic violence and some of them are homeless because of that. But victims of domestic violence would be primary."

GAROFALO "Okay. Are there any other questions of the applicant? Okay, thank you. Is there anyone else here to speak in favor of this application?"

DR. ALFRED TOCKER "My wife, who is also a doctor and I and some other doctors as a group built this building many years ago. We do not have any ownership in it at this time at all, but we do own the two houses north of the building, which are the only houses in this square here, which shows the area that we are concerned about."

I have written a letter, which I don't know if you have, in which I expressed our strong approval of the use of the YWCA of this facility. Now, we have tenants in the two houses north of it, and I have spoken to the tenants, and not only do they have no objections, but on the whole, they approve. The YWCA has built fences and improved the area, and they feel that the safety of the area will be improved by the YWCA supervision of the area. I visited the area and I was surprised. Usually when someone takes over an old building, they have to make many changes, but this is ideal for the purpose.

We had this built for ten doctors, and each of the doctors' offices is a small room and we had numerous examining rooms and these are converted and the rooms are ideal to house the people that they will be serving. So this conversion is ideal. All the small rooms can house the individuals, which the building is supposed to serve. There will be some changes, of course, we even have a shower in one area downstairs, etc., but the building is ideal for this purpose, and we strongly approve it. And I can say the tenants north have no disapproval."

GAROFALO "Are there any questions of the speaker? Okay. Is there anyone here to speak in opposition to this? All right."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the area is zoned "B" Multi-Family Residential and the adjacent neighborhood to the north is also zoned "B" Multi-Family Residential. The character of the neighborhood is one of mixed residential and medical office/hospital uses. The *St. Francis Regional Medical Center* is located just south of the site. The suitability of the subject property for the uses to which it has been restricted: The purpose of the "B" Multi-Family Residential is to accommodate high density residential and other complementary land uses. The site was formerly operated as a medical office. This site is currently used as a YMCA office that is a permitted use. The addition of the requested use would be a complimentary addition to the YWCA services provided. The proposed use would be similar to apartment living that is also permitted in this zoning district. Extent to which removal of the restrictions will detrimentally affect nearby property. The adjacent properties to the north, south, east and west are zoned "B" Multi-Family Residential. A variety of uses are already permitted on the properties zoned "B" Multi-Family Residential. Minimal detrimental effects are anticipated from the proposed *Conditional Use* recommended for this request. The conditions placed on the request mitigate the prospect of a detrimental impact on adjacent properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The plan contains strategies concerning "public safety services" which states that the City is to "coordinate and consolidate the planning, design and implementation of new/existing facilities to maximize cost efficiency and public safety." Impact of the proposed development on community facilities: With approval of this project, the projected impact on community facilities is minimal.) I move

that we recommend to the governing body that the request be approved, subject to staff comments."

OSBORNE-HOWES moved, **BARFIELD** seconded the motion.

GAROFALO "Is there any discussion on the motion?"

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition. McKay abstained.

14. Approve the Metropolitan Planning Organization's Unified Planning Work Program (UPWY) for the period of July 2000 to December 2001 and adopt the resolution.

JAMSHEED MEHTA, Planning staff "Before you is the Unified Planning Work Program for the Fiscal Year 2001. About two months ago, I presented this to you in a draft format. It has come back to you, full circle after having made some minor revisions based on your comments back then. The State and the Federal Highway and the Federal Transit have provided us with some additional comments, which have been included. As part of the MPO process, this has now been reviewed by the Technical Advisory Committee and the Coordinating Committee on transportation planning.

What you have before you, then, is the version which will go to the governing bodies. The City Council hears it next week on Tuesday and the County Commission on Wednesday. The reason why it goes beyond you, although you are the MPO, the final say in the matter, as far as the Urban Planning Work program goes, is because there are some matching funds implications involved by virtue of \$206,000 of participation in local match. We will get \$824,000 to continue with our transportation planning and long range planning program for the 18-month period. The only reason why it is 18 months instead of the usual 12-month fiscal cycle is that we have been approached by the state to come in line with all of the other planning organizations statewide. Their fiscal years begin in January and ours was following the State all along, so now we are doing them a favor by going 18 months instead of 12 months.

Back two months ago, when I talked about the draft version, since then, the only addition in language has to do with, and I will just highlight these three or four points for your consideration if you haven't already noticed it in the document. We include language which would improve public involvement process and include outreach activities for low-income and minority populations."

GAROFALO "Where is that, Jamsheed? At the front?"

MEHTA "It is on Page 13, under Item 11, 'prepare and implement a public awareness program that explains the need for planning and the role of citizens in the role of citizens in the planning process'. Although it says it very plainly over here, what it really amounts to is that there is a process called environmental justice, and we are required to have a process in which we actually go seek out, in some cases, where representation from certain population groups is not quite there when we are reviewing either capital improvement programs or the use of any kind of federal funds on large projects.

We don't have a process of that sort in place, per se, and the feds have asked us to review our existing processes and include that. The other element over here is develop and evaluate an environmental justice, non-discrimination policy and I think it is part of that same program. Then, to talk about air quality planning and clean air act compliance, I had mentioned this a couple of months ago, but I will just retread real quickly. We are at the point where, either in a year or possibly two years at the most, we will be in non-compliance for Ozone. When that happens, the way we do planning and the way federal funds get distributed will change very drastically. We have to prepare for that."

MCKAY "Move the monitoring and get them out of the downtown area. Put them out at the edge like most cities do."

MEHTA "And within a year or so, we will also be told of what would be the new MPO boundaries. Quite likely, the boundary, which is right now the Sedgwick County limits, have to be expanded and we will be going into part of Butler County because of our expanding metropolitan area being contiguous to Andover. When that happens, it is quite likely that the MPO body might see a change in its membership. It is also likely that the method in which we administer the processes might also change. So we will just be examining and looking into what the options are in the course of about a year or so. We will keep you posted on that.

Other than that, most of the things we did mention already in the draft, unless you want me to go over again. It is quite a long list."

GAROFALO "Does anybody want to hear that list? I don't think it will be necessary. Does anybody have any questions then, of Jamsheed? We need a motion, then on the recommended action."

MEHTA "There are two things. One is the approval of the Unified Work Program and the second one is a resolution for the Chair to sign and then it goes on to the governing bodies."

MOTION: That the Metropolitan Area Planning Commission approve the FY-2001 Unified Planning Work Program.

MCKAY moved, **PLATT** seconded the motion, and it carried unanimously (11-0).

MOTION: That the Metropolitan Area Planning Commission adopt the Resolution authorizing the Director of Planning to submit application, negotiate agreements, and execute contracts in support of the UPWP.

MCKAY moved, **LOPEZ** seconded the motion, and it carried unanimously. (11-0).

15. Other Matters

GAROFALO "Let me just mention one thing before everybody departs. Two weeks ago, we had a pretty embarrassing situation. We didn't get started until like 45 minutes late because we didn't have a quorum. Then we tried to call some people and could not reach them. Because of circumstances, we lost the quorum at 5:00 o'clock and had to defer three items. There were people who sat here all afternoon waiting to be heard, and didn't get heard. So I would reiterate what Marvin wrote in the little note here, that if you are not going to be able to make the meeting, please call me, call Marvin, call Dale or somebody at Planning and let us know so we can make adjustments or whatever. We came very close to not being able to have any of the meeting two weeks ago."

JOHNSON "Marvin, a little bit more on that issue. If there are some members that are here and they know, which I think there were some members that showed up that did have to leave, and the chair was aware of it and Marvin was aware of it. If we knew what time that was, is there any way to look at the agenda and give some of the people at the end of the meeting an opportunity to say that we are liable to lose a quorum at 4:00 or whatever and there is a possibility that we will not get to your case. If they have an opportunity then, to ask us to move it on to the next meeting, or we will risk a chance of staying and if they stay and we don't move it for them, they can handle it. Is there anyway of doing that?"

KROUT "Possibly. Although we are trying to schedule these cases so that they are not going to be here at 1:30 if they are supposed to be heard at 3:00 or 4:00."

JOHNSON "I am just thinking about you have somebody who has sat there and all of a sudden this is a total surprise. If they knew ahead of time for like two hours and they said there might be a possibility that we might use a quorum and yet they say they will chance it and sit there, they are in a whole different frame of mind then."

KROUT "And that is why I did ask if you could tell us, not just if you are not going to be here, but tell us if you are going to be late or if you have to leave early. What we could do is at the beginning of each meeting, find out before we start who has to leave early, and in case someone forgot to call, we can at least find out at the beginning of the meeting whether or not we will have a problem with a quorum."

JOHNSON "And then I guess the last thing is if we got a situation like that, the Chair may want to keep us on track and not let us off on tangents."

GAROFALO "I think I will bring some duct tape then."

MCKAY "In defense of this group, some of us have been on here a long period of time, and this is only about the second time, this has happened. In my ninth year, that is the second time it has happened. Susan can tell you and so can Richard that that happened one other time and we had been here since noon and it was 8:50 and we lost a quorum. I don't think that is a very bad record, although it is embarrassing and we should notify you if we aren't going to be here. But that is only the second time since I have been around here that that has happened."

GAROFALO "That hasn't happened before since I have been on here, but we have come close."

OSBORNE-HOWES "This time, it was a situation where we kind of know we would lose a quorum at a certain point. We probably should have announced it to them."

BARFIELD "I don't know how many left, but I did leave early and called back at about 4:30 to see if I was needed and I was told that I was not needed."

GAROFALO "You were. By that time, I knew Susan was going to leave at 5:00, so we did need you. Somebody did say that you had called in as I had asked, and you did. Is there anything else to come before this body?"

The Metropolitan Area Planning Department informally adjourned at 4:30 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)
